

MONTANA LEGISLATIVE HISTORY

Chapter 629 19 93

Bill H _____ S 310 Original bill & history ✓ C

H. Committee on Agriculture, Livestock, & Irrigation

Hearing Date(s) Mar 11 ✓ C

Mar 25 ✓ C

_____ C

_____ C

Date Out Mar 27 ✓ C

S. Committee on Judiciary

Hearing Date(s) Feb 17 ✓ C

Feb 20 ✓ C

_____ C

_____ C

Feb 23 ✓ C

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

Free Conference Committee

Apr 14

Apr 19

Apr 20

2/03	FISCAL NOTE REQUESTED		
2/08	FISCAL NOTE RECEIVED		
2/09	FISCAL NOTE PRINTED		
2/10	HEARING		
2/11	REVISED FISCAL NOTE RECEIVED		
2/11	REVISED FISCAL NOTE PRINTED		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	38	8
2/19	3RD READING PASSED	41	9
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/23	FIRST READING		
3/05	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/10	2ND READING CONCURRED	89	10
3/12	3RD READING CONCURRED	82	13
	RETURNED TO SENATE		
3/18	SIGNED BY PRESIDENT		
3/21	SIGNED BY SPEAKER		
3/22	TRANSMITTED TO GOVERNOR		
3/25	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 194		
	EFFECTIVE DATE: 07/01/93		

SB 308 INTRODUCED BY STANG, ET AL.
REVISE METHOD OF CALCULATING GUARANTEED TAX BASE AID TO
ELIGIBLE SCHOOL DISTRICTS

2/03	INTRODUCED
2/03	REFERRED TO EDUCATION & CULTURAL RESOURCES
2/03	FIRST READING
2/03	FISCAL NOTE REQUESTED
2/10	HEARING
2/10	FISCAL NOTE PRINTED
2/10	FISCAL NOTE RECEIVED
2/19	COMMITTEE REPORT—BILL PASSED AS AMENDED
2/20	TAKEN FROM 2ND READING AND REREFERRED TO TAXATION
2/20	REVISED FISCAL NOTE REQUESTED
3/02	REVISED FISCAL NOTE RECEIVED
3/03	REVISED FISCAL NOTE PRINTED
4/01	TABLED IN COMMITTEE

SB 309 INTRODUCED BY STANG
SUSPEND DRIVER'S LICENSES FOR DRUG VIOLATION CONVICTIONS
BY REQUEST OF DEPARTMENT OF JUSTICE

2/03	INTRODUCED
2/03	REFERRED TO HIGHWAYS & TRANSPORTATION
2/03	FIRST READING
2/09	HEARING
2/09	TABLED IN COMMITTEE

SB 310 INTRODUCED BY REA, ET AL.
PROVIDE FOR CONDITIONAL REMISSION OF CERTAIN CLAIMS TO
EXISTING RIGHTS TO THE USE OF WATER DETERMINED BY THE
MONTANA SUPREME COURT TO HAVE BEEN FORFEITED PURSUANT TO
SECTION 85-2-226, MCA

2/03	INTRODUCED
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2/03	REFERRED TO JUDICIARY		
2/03	FIRST READING		
2/03	FISCAL NOTE REQUESTED		
2/09	FISCAL NOTE RECEIVED		
2/16	FISCAL NOTE PRINTED		
2/17	HEARING		
2/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	2ND READING PASSED	49	0
2/24	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
2/24	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
3/06	FIRST READING		
3/11	HEARING		
3/27	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/30	2ND READING CONCURRED AS AMENDED	71	28
4/01	3RD READING CONCURRED	61	37
	RETURNED TO SENATE WITH AMENDMENTS		
4/05	2ND READING AMENDMENTS NOT CONCURRED	26	23
4/05	MOTION FAILED TO SEGREGATE FROM THE COMMITTEE OF THE WHOLE REPORT	21	29
4/06	CONFERENCE COMMITTEE APPOINTED		
4/07	CONFERENCE COMMITTEE DISSOLVED		
4/07	FREE CONFERENCE COMMITTEE APPOINTED		
4/22	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/24	MOTION FAILED TO ADOPT FREE CONFERENCE COMMITTEE REPORT NO.1 ON 2ND READING	22	27
4/24	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 REJECTED	26	23
4/24	SEGREGATED FROM THE COMMITTEE OF THE WHOLE REPORT	49	0
4/24	ON MOTION RULES SUSPENDED TO PLACE ON 2ND READING THIS DAY	49	0
4/24	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
4/24	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	45	4
	HOUSE		
4/12	FREE CONFERENCE COMMITTEE APPOINTED		
4/22	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/22	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	86	14
4/22	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	84	16
4/28	SIGNED BY PRESIDENT		
4/28	SIGNED BY SPEAKER		
4/29	TRANSMITTED TO GOVERNOR		
5/11	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 629		
	EFFECTIVE DATE: 07/01/93		

SB 311 INTRODUCED BY JERGSON, ET AL.
 DEFINE DIVISION ORDER FOR THE DISTRIBUTION OF OIL OR GAS
 PROCEEDS

2/03	INTRODUCED		
2/03	REFERRED TO NATURAL RESOURCES		
2/03	FIRST READING		
2/08	HEARING		
2/10	COMMITTEE REPORT—BILL PASSED		
2/12	2ND READING PASSED	50	0

SENATE BILL NO. 310

INTRODUCED BY REA, KOEHNKE, SPRING, BECK, BURNETT, LYNCH,
KASTEN, TVEIT, NATHE, HERTEL, DEVLIN, CRIPPEN, HIBBARD,
WALLIN, M. HANSON, SWIFT, BACHINI, QUILICI, RYE,
GROSFIELD, MESAROS, VAN VALKENBURG, HAGER, LARSON,
SWYSGOOD, DEBRUYCKER, GRINDE, STOVALL, ZOOK, CLARK,
TASH, BRUSKI-MAUS, VOGEL, WEEDING, KNOX

IN THE SENATE

FEBRUARY 3, 1993

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

FEBRUARY 22, 1993

COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 23, 1993

PRINTING REPORT.

SECOND READING, DO PASS AS AMENDED.

ENGROSSING REPORT.

FEBRUARY 24, 1993

THIRD READING, PASSED.
AYES, 48; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 1, 1993

INTRODUCED AND REFERRED TO COMMITTEE
ON AGRICULTURE, LIVESTOCK, & IRRIGATION.

FIRST READING.

MARCH 27, 1993

COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 30, 1993

SECOND READING, CONCURRED IN AS
AMENDED.

APRIL 1, 1993

THIRD READING, CONCURRED IN.
AYES, 61; NOES, 37.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

d

APRIL 5, 1993

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

APRIL 6, 1993

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

APRIL 7, 1993

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 12, 1993

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

APRIL 24, 1993

FREE CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 24, 1993

FREE CONFERENCE COMMITTEE REPORT REJECTED

ON MOTION, SEGREGATED FROM COMMITTEE OF T
WHOLE REPORT AND PLACED ON 2ND READING.

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. 310 *Spuch*
 2 INTRODUCED BY *Rea Fickelberg* *Beck* *Burns*
 3 *W. F. NATHAN* *W. F. NATHAN* *W. F. NATHAN*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
 5 ACCEPTANCE OF STATEMENTS OF CLAIM TO EXISTING WATER RIGHTS
 6 FILED AFTER 5 P.M., APRIL 30, 1982; ESTABLISHING A
 7 REBUTTABLE PRESUMPTION OF ABANDONMENT FOR SUCH WATER RIGHTS;
 8 PROVIDING FOR THE ESTABLISHMENT OF A PROCEDURE FOR
 9 ADJUDICATING THOSE RIGHTS; PROVIDING A DEADLINE FOR
 10 ACCEPTANCE OF STATEMENTS OF CLAIM; AMENDING SECTIONS
 11 85-2-221, 85-2-226, AND 85-2-231, MCA; AND PROVIDING AN
 12 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
 13 DATE."

15 WHEREAS, Article IX, section 3, of the Montana
 16 Constitution provides that all existing rights to the use of
 17 any waters for any useful or beneficial purpose are
 18 recognized and confirmed; and

19 WHEREAS, Article IX, section 3, of the Montana
 20 Constitution provides that the Legislature shall provide for
 21 the administration, control, and regulation of water rights
 22 and shall establish a system of centralized records; and

23 WHEREAS, Article IX of the Montana Constitution was
 24 adopted to protect Montana water rights from claims by water
 25 users in downstream states; and

1 WHEREAS, in order to protect Montana water rights from
 2 downstream claims, the Montana Legislature established a
 3 procedure for the general adjudication of water rights and
 4 provided in section 85-2-226, MCA, that the failure to file
 5 a claim to an existing right in response to a general notice
 6 of adjudication and in accordance with the deadline
 7 established under section 85-2-221, MCA, would establish a
 8 conclusive presumption of abandonment of that right; and

9 WHEREAS, section 85-2-226, MCA, was enacted to
 10 facilitate the prompt filing of claims and speedy
 11 adjudication on the merits of each case; and

12 WHEREAS, the general adjudication is still pending, and
 13 through the course of the adjudication, it has come to the
 14 attention of the Legislature that the provisions of section
 15 85-2-226, MCA, may result in the loss of otherwise valid
 16 Montana water rights; and

17 WHEREAS, the Legislature determines that the summary
 18 abandonment of water rights does not afford adequate
 19 protection to Montana water rights as intended by the
 20 Montana Constitution and by the Montana Legislature and is
 21 inconsistent with long-established principles of
 22 abandonment; and

23 WHEREAS, it is the intent of the Legislature that the
 24 adjudication process must provide for the adjudication of
 25 all Montana water rights in existence on July 1, 1973; and

1 WHEREAS, because the general adjudication of water
2 rights is not completed and will be ongoing for at least 20
3 years, the Legislature finds that the acceptance of
4 additional Statements of Claim will not unduly delay the
5 adjudication; and

6 WHEREAS, the Legislature determines that section
7 85-2-226, MCA, imposes a harsh and unnecessary penalty for
8 failure to file a Statement of Claim by April 30, 1982, and
9 that the penalty is not consistent with the intent of the
10 Montana Constitution and of the Legislature and should,
11 therefore, be adjusted in a manner that will more
12 appropriately balance the interests at stake in the
13 adjudication and enable the Water Court to adjudicate all
14 existing water rights.

15 THEREFORE, the Legislature finds that it is appropriate
16 to make the following amendments to sections 85-2-221,
17 85-2-226, and 85-2-231, MCA, in order to provide for the
18 acceptance of additional Statements of Claim to existing
19 water rights under the conditions set forth below.

20 STATEMENT OF INTENT

21 A statement of intent is included with this bill to
22 provide comment to the Montana supreme court regarding the
23 adoption of rules of procedure by the court. The intent of
24 this legislation is to balance the interests of the state
25

1 and of those holding Montana water rights by establishing a
2 rebuttable, rather than a conclusive, presumption of
3 abandonment for statements of claim filed after April 30,
4 1982, and by allowing the adjudication of those claims.
5 Because the adjudication is within the jurisdiction of the
6 judicial branch, the legislature believes that the Montana
7 supreme court should adopt rules of procedure governing the
8 adjudication of these water rights. The legislature
9 recognizes that various basins within the state are in
10 different stages in the adjudication and that the
11 legislature has provided a mechanism for reopening both
12 preliminary and final decrees. It is the intent of the
13 legislature, therefore, that procedures be developed to
14 allow for the adjudication of late claims submitted prior to
15 the closure of court records preceding the date of issuance
16 of the preliminary decree or in those basins in which a
17 preliminary decree has not yet been rendered. In basins in
18 which a preliminary decree or final decree has been issued,
19 the legislature intends that the late-filed claims be
20 adjudicated when the decree is reopened in accordance with
21 85-2-237. In both cases, the late claimant should be
22 required to file a request for hearing on the late claims.

23 With respect to notice, the legislature intends that
24 notice be provided to water users that late claims will be
25 accepted, subject to a rebuttable presumption of

1 abandonment, and that objections to the presumption or the
 2 claim may be filed. Whenever possible, the notice must be
 3 provided in court-generated documents of general
 4 circulation, such as the temporary preliminary decree,
 5 notice of objection, preliminary decree, and order of
 6 reopening. When this is not possible, the court should
 7 devise an alternative method for notifying water users who
 8 may be affected by the late claim. In instances in which
 9 special notice is required, the claimant requesting a
 10 hearing on the late claim should reimburse the water court
 11 for the costs associated with providing the notice. In all
 12 cases, the water court may assess a fee for the filing of a
 13 request for hearing on late claims. This fee may not exceed
 14 \$300 per request, and a claimant should submit a separate
 15 request for each basin in which late claims are filed.

16
 17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 **Section 1.** Section 85-2-221, MCA, is amended to read:

19 "85-2-221. Filing of claim of existing water right. (1)
 20 A person claiming an existing right, unless exempted under
 21 85-2-222 or unless an earlier filing date is ordered as
 22 provided in 85-2-212, shall file with the department no
 23 later than June 30, 1983, a statement of claim for each
 24 water right asserted on a form provided by the department.

25 (2) (a) The department shall accept and the water court

1 shall adjudicate all statements of claim filed prior to the
 2 date certified by the water judge, pursuant to 85-2-231(6),
 3 as the completion date of the preliminary decree for the
 4 basin in which the claimed right is located.

5 (b) If a preliminary or final decree is reopened
 6 pursuant to 85-2-237, the department shall accept and the
 7 water court shall adjudicate all statements of claim filed
 8 within the time specified in 85-2-237(5) for filing of
 9 objections.

10 (c) Statements of claim filed after April 30, 1982,
 11 must be adjudicated by the water judge pursuant to 85-2-226.

12 (d) It is the sole responsibility of each claimant to
 13 monitor the progress of the water court proceedings to
 14 determine the completion date of the preliminary decree and
 15 a filing deadline under 85-2-237(5).

16 (2)(3) The department shall file a copy of each
 17 statement of claim with the clerk of the district court for
 18 the judicial district in which the diversion is made or, if
 19 there is a claimed right with no diversion, the department
 20 shall file a copy of the statement of claim with the clerk
 21 of the district court of the judicial district in which the
 22 use occurs."

23 **Section 2.** Section 85-2-226, MCA, is amended to read:

24 "85-2-226. Abandonment by failure to file claim
 25 rebuttable presumption -- adjudication procedure -- fee. (1)

1 The failure to file a claim of an existing right as required
2 by 85-2-221(1) establishes a conclusive rebuttable
3 presumption of abandonment of that right.

4 (2) The water judge may find that the rebuttable
5 presumption of abandonment is overcome if the claimant files
6 a request for hearing and demonstrates by a preponderance of
7 the evidence that the claimed right was a historical,
8 unabandoned, beneficial use of water and an existing right
9 as of July 1, 1973.

10 (3) The supreme court shall establish rules and
11 procedures to provide for the filing of requests for hearing
12 and the submission of evidence to overcome the rebuttable
13 presumption.

14 (4) The supreme court shall establish rules and
15 procedures to ensure that other claimants who may be
16 affected by the acceptance of the claimed right are notified
17 that the claimed right is presumed abandoned and that
18 objections to the presumption or the claim may be filed
19 pursuant to the rules and procedures adopted by the water
20 judge.

21 (5) The water court may assess a fee not to exceed \$300
22 for the filing of a request for hearing, and if it is
23 determined that other claimants require notification by
24 means other than through publication of the temporary
25 preliminary or preliminary decree or through other documents

1 served upon claimants in the natural course of the
2 adjudication, then the claimant filing the request for
3 hearing shall reimburse the water court for the costs
4 associated with providing the required notice."

5 **Section 3.** Section 85-2-231, MCA, is amended to read:

6 "85-2-231. Temporary preliminary and preliminary
7 decree. (1) A water judge may issue a temporary preliminary
8 decree prior to the issuance of a preliminary decree if the
9 temporary preliminary decree is necessary for the orderly
10 adjudication or administration of water rights.

11 (2) (a) The water judge shall issue a preliminary
12 decree. The preliminary decree shall must be based on:

13 (i) the statements of claim before the water judge;

14 (ii) the data submitted by the department;

15 (iii) the contents of compacts approved by the Montana
16 legislature and the tribe or federal agency or, lacking an
17 approved compact, the filings for federal and Indian
18 reserved rights; and

19 (iv) any additional data obtained by the water judge.

20 (b) The preliminary decree shall must be issued within
21 90 days after the close of the special filing period set out
22 in 85-2-702(3) or as soon thereafter as is reasonably
23 feasible.

24 (c) This section does not prevent the water judge from
25 issuing an interlocutory decree or other temporary decree,

pursuant to 85-2-321 or as provided in subsection (1) of this section, or if such-a an interlocutory decree or other temporary decree is otherwise necessary for the orderly administration of water rights prior to the issuance of a preliminary decree.

(3) A preliminary decree may be issued for any a hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, at a time different from the issuance of other preliminary decrees or portions of the same decree.

(4) The preliminary decree ~~shall~~ must contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234. The water judge shall include in the preliminary decree the contents of a compact negotiated under the provisions of part 7 that has been approved by the legislature and the tribe or federal agency.

(5) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree set forth in subsections (1) and (3) and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not so satisfied, he the water judge may, ~~at his option,~~ recommit the report to the master with

instructions, or modify the report and issue the preliminary decree.

(6) When the water judge has completed all requirements for issuance of a decree and closed the court records pertaining to the decree, the water judge shall certify to the department that the preliminary decree is completed for the basin and shall take appropriate steps to print and issue the preliminary decree.

~~(6)~~ (7) In issuing a subsequent preliminary decree, the water judge shall incorporate the temporary preliminary decree for the basin as modified by objections and hearings. The temporary preliminary decree or preliminary decree, as modified after objections and hearings, is enforceable and administrable according to its terms among parties ordered under 85-2-406. The preliminary decree, as modified after objections and hearings, ~~shall-upon-issuance-supersede-and replace when issued, supersedes and replaces~~ the temporary preliminary decree."

NEW SECTION. Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 5. Retroactive applicability.

1 [This act] applies retroactively, within the meaning of
2 1-2-109, to all water right statements of claim filed after
3 May 11, 1979.

4 NEW SECTION. **Section 6.** Effective date. [This act] is
5 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0310, as introduced

DESCRIPTION OF PROPOSED LEGISLATION: Senate Bill 310 is intended to balance the interests of the state and those holding Montana water rights by establishing a rebuttable, rather than a conclusive, presumption of abandonment for statements of claim filed after April 30, 1982. For those basins where a preliminary decree has not yet been issued, the bill allows late claims to be submitted up to a date set by the water judge as the completion date of the preliminary decree for the basin in which the late claim is located. For preliminary decrees and final decrees to be reopened pursuant to 85-2-237, late claims may be filed up to the time specified by the water judge for filing objections. The bill allows these claims to be adjudicated. The claimant must demonstrate by a preponderance of evidence that the late claim is beneficial, not abandoned, and an existing right as of July 1, 1973.

ASSUMPTIONS:

1. A total of 3,200 late claims have been filed to date.
2. Another 2,800 late claims will be submitted over the course of the adjudication process.
3. Total number of late claims will be 6,000.
4. \$70,000 in filing fees will be collected and deposited in the adjudication account for the 2,800 additional late claims.
 - a. 750 of the new late claims will be decreed rights or will be filed after the \$480 capping exemption has been reached and no fee will be required.
 - b. 600 of the new late claims will be stock and domestic on the same filing and \$12,000 will be collected in fees.
 - c. The remaining 1,450 claims will bring in \$58,000 in fees based on \$40 per claim.
5. Initial processing and inputting of new late claims into the Water Court computer data base will cost \$25 per claim. (2800 claims X \$25 per claim = \$70,000)
6. Cost for the Water Court to examine all late claims in accordance with Supreme Court Examination Rules will be \$600,000.
 - a. Examination cost per claim is \$100.
 - b. Late claims in decrees to date would be reexamined.
 - c. 6000 claims X \$100 per claim = \$600,000.
7. Cost to include the late claims in decrees will be an additional \$2,000 for computer processing and printing.
8. The duration of the adjudication program to completion will be 20 years (obtained from ninth WHEREAS statement in bill).
9. The cost of processing, inputting, examining, hearing, and deciding late claim issues will be spread evenly over the duration of the adjudication program.

(continued on next page)

David Lewis 2-13-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2/16/93
JACK REA, PRIMARY SPONSOR

DATE

Fiscal Note for SB0310, as introduced

SB 310

10. The Water Court will have revenues over the term of the adjudication of \$400,000 based on an average cost of \$200 per hearing with the potential for 2,000 hearings.
11. The adjudication will be extended by 4.8 years and the Water Court's anticipated operating expenses will be \$529,455 (FY93 budget) per year or \$2,541,384 over the term of the adjudication.
12. The jurisdictional status of Montana adjudication under the McCarran Amendment, 43 U.S.C Section 666(a) will not be affected by the passage of this bill.
13. Compacts being negotiated by the Reserved Water Rights Compact Commission will not be placed in jeopardy by passage of this bill.
14. Passage of the bill will not affect a governmental taking with the scope of the Fifth Amendment or Article II, Section 29 of the Montana Constitution.
15. The legislature has the power to establish water rights and place those rights in a chain of priorities that may otherwise be inconsistent with the prior appropriation doctrine.
16. The passage of the bill will have little or no fiscal impact on any required publication of final notice required by "due process".
17. The comprehensiveness, finality and binding effect of the on-going adjudication will not be affected by the passage of this bill.

FISCAL IMPACT:

Department of Natural Resources and Conservation: Over the duration of the adjudication program, the total fiscal impact will require expenditures of \$602,000 more than revenue. For each biennium the expenditures will exceed revenue by \$60,200 (\$67,200 - \$7,000).

	<u>FY94</u>	<u>FY95</u>	<u>Total Biennium</u>
<u>Expenditures:</u>	33,600	33,600	67,200
<u>Revenues:</u>	3,500	3,500	7,000
<u>Net Impact:</u>	(30,100)	(30,100)	(60,200)

Water Court: There will be no fiscal impact for FY94 and FY95, but with an extended adjudication period of 4.8 years there will be associated expenses of \$2,541,384. Revenues will be \$400,000 over the term of the adjudication.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: Averages over a 20 year period have been presented in the Department of Natural Resources and Conservation derivations above. However, the fiscal impact may be smaller than expected for the 1994-95 biennium because the number of claims received (revenue) may be greater than projected. The fiscal impact in later bienniums may be greater because the number of claims received (revenue) may be less than projected.

SB0310 will extend the adjudication 4.8 years.

(continued on next page)

SB 310

TECHNICAL NOTES:

The legal assumptions 12 through 17 may not be true statements of law.

Increasing the average cost per adjudication hearing from \$200 to approximately \$1,270, will generate revenues equal to the anticipated expenditures of the Water Court over the 4.8 year process.

A flat \$100 filing fee for the 6,000 projected late claims would cover the examination costs incurred during the adjudication process.

12
SB310

COMMITTEE--SENATE JUDICIARY

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BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

SB0277	BIANCHI, DON		1/29	2/10	REQUIRE SIGNS RATHER THAN ORANGE PAINT AS METHOD OF POSTING PRIVATE PROPERTY					
					TABLED ON	02/19				
SB0281	FRITZ, HARRY		1/30		PROTECT RIGHTS OF CHILDREN AND CREATE CHILDREN'S ADVOCATE OFFICE					
SB0303	BIANCHI, DON		2/03		REPEAL JOINT AND SEVERAL LIABILITY LAW					
					TABLED ON	02/19				
SB0304	CHRISTIAENS, CHRIS		2/03	2/11	FORFEITURE AND DISPOSAL OF UNINSURED MOTOR VEHICLE INVOLVED IN ACCIDENT					
					TABLED ON	02/19				
SB0310	REA, JACK		2/03	2/17	PROVIDE FOR PROCEDURES FOR REMISSION OF AND FILING OF WATER RIGHT CLAIMS					
					PASS AS AMENDED	2-20				2/22
SB0321	CHRISTIAENS, CHRIS		2/05	2/15	REVISE MEDICAL PAROLE ELIGIBILITY					
					DO PASS	2-16				2/16
SB0323	CHRISTIAENS, CHRIS		2/05	2/15	SHOCK INCARCERATION PROGRAM					
					DO PASS	2-19				2/20
SB0333	RYE, DAVID		2/08	2/18	FULLY INFORMED JURY					
					ADVERSE RPT ADOPT	2-19				2/19
SB0336	YELLOWTAIL, BILL		2/08	2/18	COORDINATE JUDICIAL SALARY INCREASES WITH INCREASES FOR STATE EMPLOYEES					
					PASS AS AMENDED	2-19				2/22
SB0344	WATERMAN, MIGNON		2/09	2/20	CLARIFY PRESENTENCE EVALUATIONS					
					PASS AS AMENDED	2-20				2/22
SB0345	BIANCHI, DON		2/09	2/20	ALLOW ATTORNEY FEES AND COSTS TO PLAINTIFF IN PROPERTY DAMAGE CLAIM					
					TABLED ON	02/22				
SB0346	YELLOWTAIL, BILL		2/09		INSTREAM FLOW					

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on February 17, 1993,
at 10:03 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)

Members Excused: Sen. Towe

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 310
SJR 15
SB 397
Executive Action: SJR 15

HEARING ON SJR 15

Opening Statement by Sponsor:

Senator Christiaens, District 18, said SJR 15 calls for a study of the Montana Human Rights laws in the State of Montana. The study would look at alternative methods for handling cases and facilitate quicker action and determination for the cases that come before the Commission. Senator Christiaens urged the passage of SJR 15.

Proponents' Testimony:

NONE

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

NONE

Closing by Sponsor:

Senator Christiaens closed.

EXECUTIVE ACTION ON SJR 15

Motion/Vote:

Senator Blaylock moved SJR 15 DO PASS. The motion CARRIED UNANIMOUSLY.

HEARING ON SB 310

Opening Statement by Sponsor:

Senator Rea, District 38, said SB 310 addresses late water right filings. Senator Rea said SB 310 would amend the 1979 Water Use Act.

Proponents' Testimony:

Mark Josephson, an attorney in Big Timber, told the Committee that the Water Use Act stated that if a person did not file their water right claim with the Department of Natural Resources and Conservation (DNRC) by 5 p.m. on April 30, 1982 the water rights were deemed conclusively abandoned. The Supreme Court has upheld the statute as a forfeiture statute. Mr. Josephson said if the State is trying to preserve its water rights, it makes no sense to allow forfeiture to stand. Allowing late claims would not cause a substantial harm to the system because the number of late claims are insignificant.

Bruce Toole, an attorney in Billings, said the Supreme Court declared the Water Use Act constitutional, therefore causing a lot of people to forfeit their water rights. People who operate ranches depend on water for irrigating, if their water rights were taken away, the ranch would be inoperable. Allowing late claims to be considered would not disrupt the process. Mr. Toole said SB 310 would not impact compacts made with Indian tribes. SB 310 takes those compacts into account.

Vernon Westlake, Agricultural Preservation Association, read from prepared testimony. (Exhibit #1) Mr. Westlake submitted

amendments. (Exhibit #2)

Janice Rehberg, Land and Livestock Company, told the Committee that she prepared the draft of SB 310 as printed. There is an additional cost, a \$300 fee, to offset the cost to the court system. Ms. Rehberg said there were concerns raised about possible effects of SB 310, therefore a substitute bill was prepared. Ms. Rehberg said the concept of the proposed substitution is as follows. The original bill established a rebuttable presumption. Everyone would have to prove and overcome the rebuttable presumption. The format was changed so it would require the judge to send out an order to show cause why the right should be abandoned. Therefore, people who had objections to the late claims, could make their objections and a hearing could be held. People could make objections on the parameters of the claim, which is the normal process. They could make objections, claiming that the right was abandoned and was not an existing right in 1973. People could make objections based upon detrimental reliance on the presumption of abandonment. Ms. Rehberg asked the Committee to take the substitute bill into consideration for passage.

W. G. Gilbert III, an attorney from Dillon, said passing the SB 310 would do a great service to the citizens of Montana. If SB 310 was denied it would convert ranches into unirrigated deserts. Mr. Gilbert said the fiscal note for SB 310 is much too high and expensive. Mr. Gilbert said SB 310 provides a high filing fee to discourage frivolous claims and also provides revenue to deal with the late claims.

Joe Brunner, Montana Water Resource Association, (MWRA), supported SB 310. Ms. Brunner said the MWRA believes there should be a time frame in which to file late claims.

Former Senator Anderson told the Committee the whereas in Section 3, of the Montana Constitution, provides that all existing rights for any use of water for any useful or beneficial purposes are recognized and confirmed. Senator Anderson said the intent was not to deprive anyone of rights for beneficial use of water or deprive them of any decreed or adjudicated rights. Senator Anderson said it is important for SB 310 to be passed.

Jeff Walker told the Committee that under the current water law, if a person makes one mistake, their water rights would be taken away. Mr. Walker strongly urged support for SB 310.

Victor Krugar read from prepared testimony. (Exhibit #3)

Jess Nuttall read from prepared testimony. (Exhibit #4)

Lyle Richards read from prepared testimony. (Exhibit #5)

Pattie Lesnik said the purpose of Government is to help people, not to legislate punishments. If SB 310 does not pass, people

will be punished. Land values decrease if they do not have water rights. Ms. Lesnik urged the Committee to support SB 310. Ms. Lesnik submitted a letter from John Lesnik (Exhibit #6) and petitions. (Exhibit #7)

Bruce Malcolm told the Committee that he is a rancher in Emmigrant, Mt and a Conservation District supervisor. Mr. Malcolm supported SB 310.

Allen Shumate supported SB 310. Mr. Shumate said it was a human error that started the whole process of SB 310. The people who made an honest mistake, by filing late, should not be denied their water.

Tim O'Neill supported SB 310.

Peter Wipf read from prepared testimony. (Exhibit #8) Mr. Wipf submitted testimony from Craig Dubois. (Exhibit #9)

Eugene Moulli read from prepared testimony. (Exhibit #10)

Lee Yelin, Land and Water Consultant, supported SB 310.

Dean Hall supported SB 310. Mr. Hall told the Committee a time frame needed to be included in which to file late claims.

Peter McNamee read from prepared testimony. (Exhibit #11)

Cameron Mackenzie submitted instructions for filing water claims. (Exhibit #12) Mr. Mackenzie said he filed under those instructions, but was still accused of abandoning his water rights. Mr. Mackenzie said SB 310 would be a life saving bill for his family.

Echo Garberg read from prepared testimony. (Exhibit #13)

Pat McNamee read from prepared testimony. (Exhibit #14)

Bill Wibberding said he bought 40 acres with the understanding that the water rights were included. However, there were no water rights, therefore the land was worthless without the water. Mr. Wibberding urged the Committee to support SB 310.

Todd Alice told the Committee Montanans need SB 310.

Opponents' Testimony:

Kathleen Fleury, Office of Indian Affairs, representing Caleb Shields for the Assiniboine Sioux Tribe, said that tribe opposed SB 310 in its present form, but would have no objections to the bill if certain modifications were made. The tribe recommended a clause be added to Section 5, of SB 310, stating, "provided that nothing in this amendment shall affect the validity of any water right settlements between the State of Montana and any Indian

tribe that has been approved by the State and the tribes prior to the passage of the amendment. Nor shall anything in the amendment enable any person filing a water claim under the provisions of the amendment impose any objection to such settlements and proceedings with the Montana Water Court or any other court."

Chris Tweeten, Chief Deputy for the Department of Justice, submitted written testimony from Richard Aldrich, the Department of Interior. Mr. Tweeten reiterated the statement. (Exhibit #15)

Karen Fagg, Governors Office, read from prepared testimony. (Exhibit #16)

Richard Moe read from prepared testimony. (Exhibit #17)

Questions From Committee Members and Responses:

Senator Doherty asked Mr. Toole what his defense would be in a personal injury action, if the action was filed three years and one day after the accident. Mr. Toole said his defense would be the statute of limitations. However, people involved in personal injury actions, are aware of the process. Mr. Toole said most of the individuals who filed late water claims were not aware of the process.

Senator Crippen asked Ms. Rehberg about the McCarren amendment. Ms. Rehberg said the McCarren amendment provides that the federal government waive its sovereign immunity in situations in which there is state adjudication of water rights in which the state is a necessary party. Ms. Rehberg said allowing additional claimants does not affect the generalness of the adjudication. Adjudication, which requires filing by the irrigation, mining, and municipal claimants, does not make it any less general, and does not make the United States any less a necessary party.

Senator Crippen asked Ms. Rehberg about the 1979 statute. Ms. Rehberg said the 1979 statute provided that a person could not acquire water right by adverse possession, only through permitting.

Senator Crippen asked Mr. Rehberg about water wells. Ms. Rehberg said a lot of late claims for domestic water wells were filed. Ms. Rehberg said she was interested to see how the State planned to address that, because domestic water wells were exempt from filing. It is an injustice if someone forfeited their rights by filing late, because they did not need to be filed.

Senator Blaylock asked Senator Rea about the substitute bill. Mr. Rea told the Committee he wanted the substitute bill considered.

Senator Blaylock asked Ms. Fagg if she had reviewed the

substitute bill. Ms. Fagg said no.

Senator Blaylock asked Ms. Fagg if the Governors concerns were addressed in substitute bill. Ms. Fagg said she did not know, but would look at the bill.

Senator Halligan asked Ms. Rehberg about the substitute bill. Ms. Rehberg told the Committee that the intent of the substitute bill was if a person filed their water right claim, and it had been abandoned, they could object. The person would have to pay the \$300 fee, then the court would enter sanctions if the claim was entered improperly.

Senator Grosfield asked Tim Hall, Department of Natural Resources and Conservation, about late claims. Mr. Hall said the percentage of late claims filed within a month after the deadline was very small.

Chair Yellowtail asked Mr. Hall if the 1982 deadline was established so there was a three year notice. Mr. Hall said yes.

Senator Doherty asked Ms. Rehberg about the burden of proof. Ms. Rehberg said the burden was on the late claimant to show that the water right had not been abandoned.

Senator Doherty asked Ms. Rehberg about exempting any basins for areas where there had been compacts entered into. Ms. Rehberg said it would invite challenges because of equal protection questions.

Senator Crippen asked Bruce Loble, Water Court Judge, about a preliminary decree. Judge Loble said preliminary decrees issued by Water Courts, are a computerized run of all the statements of claims filed in 1982. Water courts only issue preliminary decrees in those particular basins in which there were no federal rights. In the water court, a temporary or preliminary decree is issued and that takes all the claims that were filed in that basin. They are listed in a computer booklet which states that they are the water rights that have been filed by ranchers, water users, and miners and that becomes the decree. The preliminary decree is one that we have been issued for basins in which there were no federal rights.

Senator Crippen asked Judge Loble about the difference between a final decree and a preliminary decree. Judge Loble said when the Water Court finishes with a preliminary decree, when all the objections have been made, and the preliminary decree has been modified based upon the evidence, then the Water Court can go right into the final decree.

Senator Crippen asked Judge Loble about filing claims. Judge Loble said the Supreme Court held that claims had to be filed by 5:00 on April 30, 1982 with the Water Court or the Department of Natural Resources. Judge Loble said postmarks do not have hours

on the postmarks, only dates.

Senator Grosfield asked Judge Loble about the basins without decrees. Judge Loble said the Water Court has not issued decrees in 40 basins.

Senator Grosfield asked Judge Loble if people know they are late claimants. Judge Loble said there are people who do not know they are late claimants.

Senator Grosfield asked Mr. Hall if the DNRC notifies people that they are late claimants. Mr. Hall said no.

Chair Yellowtail asked the opponents of SB 310 to review the gray bill and get back to the Committee on their comments.

Senator Halligan told the Committee he would serve on a subcommittee to discuss SB 310.

Closing by Sponsor:

Senator Rea said he would like Senator Halligan, himself, and other Senators interested, to get together with the Department of Justice address the questions that were raised. Senator Rea told the Committee research shows that 40% of the late claims filed, were filed right before or after the filing deadline. Senator Rea said one of the reasons the claims were filed late is because the Water Court and the DNRC are not accepting the claims even though they are postmarked on the deadline date. However, the DNRC stated the claims could be postmarked by the deadline date, and therefore people filed with that assumption. Senator Rea urged the Committee to support SB 310.

HEARING ON SB 397

Opening Statement by Sponsor:

Senator Doherty told the Committee that SB 397 was a Committee bill that would make it a felony to attack judges while they are conducting their duties. SB 397 would also make it a felon to attack a judge because of their duties. Senator Doherty said SB 397 is a good bill.

Proponents' Testimony:

John Connor, Montana County Attorney's Association, urged the Committee for a DO PASS recommendation.

Craig Hoppe, Montana Magistrates Association, urged the Committee for a DO PASS recommendation.

Opponents' Testimony:

NONE

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 2-17-92

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe			X
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

2-17-93

February 17, 1993

SENATE JUDICIARY COMMITTEE

HEARING S.B. 310
SENATE JUDICIARY COMMITTEE
SENATOR BILL YELLOWTAIL, CHAIRMAN.

EXHIBIT NO. 1
DATE 2-17-93
BILL NO. SB310

Mr. Chairman and members of the Committee: I am Vernon Westlake, and I represent the Agricultural Preservation Association of the Gallatin, Madison, Jefferson, and Broadwater areas. I also represent myself as a water user with rights that were filed before April 30, 1982.

Mr. Chairman, for the Record, we support the Bill on the condition that it be amended to include a prescribed length of time for filing late claims, a closing date, and a reasonable fee for late-filed water right claims.

Also, we want included in the Bill, financial responsibility by the claimant of a late-filed claim for costs to an affected timely filed water right claimant, as well as responsibility to the water court for costs associated with a request for hearing by a claimant of a late-filed claim.

I sympathize with the people who, for numerous reasons, did not file their water right claims. I also respect the people who timely filed more than two-hundred thousand (200,000+) water right claims. The holders of these claims should not have to pay the costs to defend their claims against late filed claims. The claimant of late-filed claims is liable for all costs.

We recommend: Section 1 Section 85-2-221, MCA, starting with Line 25 (2) (a) page 5, and continuing through Lines 1, 2, 3, & 4, page 6, be amended to read: "The Department shall accept and the Water Court shall adjudicate all statements of (a late) claim filed (during a six month (6) month period) prior to the date certified by the Water Judge, pursuant to 85-2-231 (6), as the (completion) date starting the examination for completion of the preliminary decree for the basin in which the (late filed) claimed right is located." This amendment will establish a time period for filing, and date for completion of late-filed claims of water rights.

The number of late claims is projected to be 6000 or more, and the additional cost to the adjudication process is estimated at 1.8 million dollars. Apply a little arithmetic and the cost per claim is \$300 per late-filed claim.

We recommend inserting 85-2-225 MCA titled Filing Fee, as Section 2 in the Bill. Paragraphs (1) & (2) would require no change. We suggest a new paragraph (3). A late-filed claim complying with the requirements of 85-2-221 MCA as amended must be accompanied by a filing fee in the amount of \$300 per claim, and no consolidating claims for a single fee.

I am providing Senator Rea with the amendments that I have outlined in my testimony this morning. I hope that the amendments will include the changes I have recommended, thereby providing an opportunity for legitimate unfiled water rights to be adjudicated, but not creating major problems in the existing adjudication process.

Thank you for the opportunity to express my concerns with S.B. 310, and to provide amendments addressing these concerns.

AMENDMENTS - - S.B. 310 -- SUBMITTED BY VERNON L. WESTLAKE
3186 Love Lane
Bozeman, MT 59715

Amendment I: Length of filing period and closing date for late claims of water rights. Section 1 85-2-221 MCA starts on Line 18 and continues as printed through Line 24, page 5. Starting with Line 25, page 5, paragraph (2) through Lines 1, 2, 3, 4:

The Department shall accept and the Water Court shall adjudicate all statements of (a late) claim filed (in a six (6) month period) prior to the date certified by the Water Judge pursuant to 85-2-231(6) as the ~~completion~~ date (starting the examination for completion) of the preliminary decree for the basin in which the (late) claimed right is located. Lines 5 through 22 page 6 remain as printed.

Amendment II: Filing fees not included in the printed bill: move existing Section 2 to Section 3. Section 2 85-2-225 Filing fee: Paragraphs (1) & (2) no change in language as printed in the statutes. Add new paragraph (3):

A late filed claim complying with the requirements of 85-2-221 MCA as amended must be accompanied by a filing fee in the amount of \$300 per claim.

Amendment III: Section 2 in the printed bill will become Section 3. Paragraphs (1), (2), (3), (4) remain the same as printed in the bill.

Paragraph 5: The Water Court may assess a fee not to exceed \$300 for the filing of (each) request (filed by a late claimant) for hearing, and if it is determined that other claimants require notification by means other than through publication of the temporary preliminary or preliminary decree or through other documents served upon claimants in the natural course of the adjudication, then the (late) claimant filing the request for hearing shall reimburse any claimant of a timely filed claim for costs. Also, the late claimant shall reimburse the Water Court for costs associated with providing the required notice.

Section 3 in the printed bill will become Section 4, language unchanged.

Section 4 in the printed bill will become Section 5, language unchanged.

Section 5 in the printed bill will become Section 6, language unchanged.

Section 6 in the printed bill will become Section 7, language unchanged.

DATE 2-17-93
FILE NO. BB310

Article IX, Section 3, of the 1972 Constitution of Montana States,

(1) All existing rights to the use of any waters for useful or beneficial purpose are hereby recognized and confirmed.

Amendment 5, of the Constitution of the United States says in part, nor be deprived of life, liberty, or property without process of law; nor shall private property be taken for public use without just compensation.

Amendment 14, of the Constitution of the United States says in part in paragraph (1), No state shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of, life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of laws.

Article II, ~~Section~~ of the Montana Constitution also states, No person shall be deprived of life, liberty or property without due process of law.

The Sun River basin 41K and more particularly the South Fork of Sun River (sometimes now called Elk Creek) and its tributaries is an adjudicated stream according to Case No. 4742, K.B. McIver vs C. H. Campbell, et al June 13, 1911. As such the water rights were decreed to the then owners of the lands and it follows to their successors. The question might be asked why is it necessary to ^{do} this all over again when it was done legally back in 1911.

It came to my attention from legal counsel that I had failed to file for an established water right in June of 1988. This was then done and it was considered as a late filing. Judge Lessley held a hearing on late filing for basin 43B and ruled that late filings would not be considered. A later Supreme Court decision upheld this ruling.

I believe in the three part system of government, namely, Executive, Legislative and Judicial and further believe that the Judicial is supposed interpret the law.

Since the Constitution provides that my water rights are recognized and confirmed I can not see how they can be taken away. To my knowledge there has been no amendment to the Constitution changing this.

I therefor ask and encourage that SB 310 be approved in order that justice may prevail

Victor W. Krueger
Victor W. Krueger
Box 305
Augusta, MT 59410

EXHIBIT NO. 4DATE 2-17-93BILL NO. SB310

February 16, 1993

Jess Nuttall

P.O. Box 73

Pinesdale, MT. 59841

961-3700

Pinesdale Water Resource Manager

SENATE BILL 310: Effect on Pinesdale Water right claims;
S76H W 151721 Sheafman
S76H W 151722 Cow

Mr. Chairman

My name is Jess Nuttall. I am the Water Resource Manager for the Town of Pinesdale in Ravalli County.

Pinesdale has a population of over 700 people that will be seriously injured if our irrigation claims are lost.

We bought this \$200,000 property in 1986 with portions of 1st and 2nd rights on Sheafman and Cowin Creeks for the soul purpose of helping to meet our municipal water needs and E P A demands -- only to find out that our predecessor filed the claims two days before the deadline, and the department stamped them late.

How this happened is not known.... We now feel a big bite out of a valuable investment.

These claims are not abandoned. The late filing date is not our fault and the loss of these claims will bring serious injury and detriment to the irrigation, municipal and E P A demands upon our community.

The very purpose and responsibility of this body, elected by the PEOPLE, is to SERVE THE PEOPLE and their interests FIRST and not the state or Federal Government.

We therefore appeal to this legislative body to do everything within its power to accept this bill, or something like it so that we may have a remedy to this situation and with so many others with late claims be treated fairly and equitably....

Remember the PEOPLE first...

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

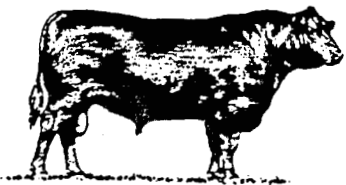
DATE 2-17-93

BILL NO. SB310

2-16-93

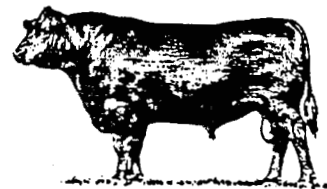
- I would like to see SB 310
Passed. I believe people have
been short changed out of their
water rights, and should have
a way to get the water rights that
were taken from them by a
technaality! These rights were
garentuted by the 1989 constitution
and supposedly by the 1972 constitution.

Lyfe Richards



LESNIK ANGUS

John and Patti Lesnik
Fishtail, Montana 59028



(406) 328-6995

February 15, 1993

Senator *Yellowtail*,
State Capitol
Helena, Montana 59620

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. *20*

DATE *2-17-93*

BILL NO. *SB310*

Your support is requested for SB 310. Failure of these rights to be recognized will adversely effect every citizen of Montana.

My own excuse is that I did not have information stating that a postmark was not acceptable proof of filing on time as it is for other instances when dealing with the State of Montana, such as submitting your income tax forms or application for special big game permits.

The information I did have made it clear that the services of a lawyer were not necessary to submit the proper claim forms and that the published literature contained all the information required to file these claims. I took that as accurate information and did not consult a lawyer or attend any meetings.

I have a small ranch which usually requires about 125% of my time to keep up with the work load (150% to keep up with the payments). I can not afford to spend time in Helena lobbying for passage of SB 310, but I can also not afford to take that time. Loss of water rights will mean that my ranch will cease to be a viable operation. That loss will affect not only my family but also the grocery, clothing, ranch supply and all the other stores where we spend our money. The tax base of the State of Montana also loses the valuation of the irrigated acres.

My family will survive, although probably not in Montana. I am lucky enough to have been trained in the Marine Corps as a pilot. I have used that knowledge to supplement the ranching income, most recently as a pilot for the Bureau of Land Management/Alaska Fire Service during the 1992 fire season. Almost all of those wages were spent in Montana.

Being located at the foot of the Beartooth Mountains, adjoining the Custer National Forest, between Red Lodge and Livingston, this ranch has far more "scenic value" than agricultural value. Its sale to out of state interests would undoubtedly erode the quality of life as we know it in Montana. Scenarios are numerous but many revolve around the theme of buffalo ranches and the loss of access to Montanans.

Thank You,

John Lesnik
John Lesnik

We the undersigned support passage of SB 310.

NAME	check columns which apply				Water source
	BUSINESS OWNER	PROPERTY OWNER	SPORTSMAN	IRRIGATOR	
John Zink	✓	✓	✓	✓	Fishtail Creek
Wayne Brimmett	✓	✓			
William Kauri	✓	✓		✓	Stillwater River
Paul Eberbeck	✓	✓		✓	
Mary Jane Rickman		✓		✓	Mendocino Creek
Ernest G. Rickman	✓	✓	✓	✓	Fishtail Creek
Arute Rickman	✓	✓	✓	✓	Fishtail Creek
Rudolph D. Jauriqui	✓	✓	✓	✓	Fishtail Creek
Ernest P. Jauriqui		✓	✓	✓	Fishtail Creek
Robert W. Esturro	✓	✓	✓	✓	Fishtail Creek
Robert K. Brown	✓	✓	✓	✓	Fishtail Creek
Ernest R. Brown		✓	✓	✓	Fishtail Creek
Erwin Brown		✓		✓	Fishtail Creek
Scott L. Lehner	✓	✓	✓		Rosebud Creek

These signatures were gathered by John Zink, Fishtail MT (within an hour & a half) With more time allowance, more signatures I'm sure would be available & the issue of SB 310 would be addressed by more voters & water users in our area.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 7

DATE 2-17-93

FILE NO. SB 310

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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D N R C

June 11, 1985

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 8

DATE 2-17-93

FILE NO. SB310

Martinsdale Colony had all intentions in filing for their existing water rights, however, due to an oversight 5 forms & claims were overlooked and were not filed until June 3 of 1982. We have two pieces of evidence to substantiate that we had all intentions to file these claims, they are:

1. the filing fee was paid to its maximum
2. the claims were completed & notarized on March 8, 1982; by Craig Dubois, a water rights bureau employee

Pete Rief Sec. treas.
Mike M. Klemminger Sec. Treas.
Paul J. Wipf Pres.

535-7459 D N R C

Make Motion to explicitly consider of let. claims (H¹⁹ Martinsdale Co.)

(Stock water claims don't need to be claimed at any time...?)
from Doss
not sure.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9

DATE 2-12-93

FILE NO. SB310

MEMORANDUM

TO: File

FROM: Craig Dubois, Water Rights Specialist
Lewistown Water Rights Field Office

DATE: December 13, 1989

SUBJECT: Martinsdale Colony late claims

Because I have had to research this problem several times in the past 4 years or more, and it appears that more discussion will be held in the future, I have decided to jot down recollections and research findings.

Two irrigation claims, 40A-W000989 and 40A-W000990, were filed on February 29, 1980, by Martinsdale Colony at the request of the Federal Land Bank because a loan was involved. Both claims were formerly decreed rights.

Mike Kleinsasser of Martinsdale Colony was in our office on the 8th of March, 1982, and worked with Sharon Gregory, technician, on completing claims. I notarized claims for them. Apparently a number of these claims involved use rights which they were going to support with affidavits or filed rights which they were going to obtain copies of. Our records indicate that 1 irrigation claim and 19 stock claims were received by our office on March 23rd, 1982, along with the maximum filing fee of \$480 paid by check #2832 and signed by Mike M. Kleinsasser. All of these 20 claims involved affidavits which were signed and notarized on March 10, 1982.

On April 20, 1982, we received irrigation claim 40A-W197900 which had been notarized by me on March 8, 1982. On June 3rd, 1985, 5 irrigation claims were received (211300-211304). These late claims had been notarized on March 8, 1982, by me. I believe these claims came in as a result of the Colony checking the Temporary Preliminary Decree and realizing that they had overlooked these 5 claims. Twelve late stock claims (211311-211322) were received and notarized on June 11, 1985.

Intro

Name Eugene Moulli

Missoula Co

SENATE JUDICIAL COMMITTEE

EXHIBIT NO.

10

DATE

2-17-93

BILL NO.

SB310

This is an extremely important issue that has serious consequences for many Montanans & the land that they live on.

I have a late claim because my predecessor failed to file on the springs that have historically been used to irrigate my land for over 100 years.

These springs arise on my land and even in early spring when they're not being used for irrigation, the water returns to the ground with ever flowing off my property. The water supports a variety of habitat for birds & wildlife year round as well as several acres of pasture, orchards, gardens, a tree nursery and shelter belt.

The water from these springs ~~are~~ used only on my land, yet without this bill the water court could conceivably give the right to use this water to claimants with false yet timely claims & may not even look at my claim just because it was late.

The loss of the use of this water would be a terrible hardship and financial burden to me & my family. It could also lead to a loss of privacy and degradation of our land both for our use as well as a lot of wildlife.

I'm sure the 1979 legislature never intended to deprive Montanans of their rights, yet this is exactly what could happen to a lot of hard working honest citizens if SB 310 is not passed.

This issue is far too important to too many people, for it to be decided solely on what date your claim was filed on.

For just one rancher or one family to suffer the devastating consequences of the loss of their legal water rights because of this, is inconceivable to me, and I'm sure was never intended to happen.

I urge you to pass SB 310 and allow Montanans with late water rights claims to at least have the chance to prove the validity of their claims.

Thank you

Diocese of Helena
Business Administration Office



515 North Ewing • P.O. Box 1729
Helena, Montana 59624 • (406) 442-5820

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 2-17-93
FILE NO. SB310

February 17, 1993

Senator Bill Yellowtail, Chairman
Senate Judiciary Committee
State Capitol
Helena, MT 59620

Re: Water Right in Basin 41 M 2 31N 09W GL

Dear Senator Yellowtail:

This concerns a Water Right for a well at Holy Family Mission on the Blackfeet Indian Reservation. This well is for domestic use only. It produces 30 gallons per minute, 1 acre foot per year. It was first used on May 1, 1890.

Holy Family Mission is a farm of 467.02 acres southeast of Browning. Since April 1, 1986, this land has been leased to Holy Family Mission, Inc., for \$10.00 per year as a farm. Our goal is to have a productive farm and, perhaps, develop related agricultural industries to employ members of the Blackfeet Tribe.

During 1981, we researched water rights through various water right, county, and state offices, as well as with the Tribe. We pay a fee to the United States of America to use water rights from the Two Medicine River for agricultural purposes. The domestic well appeared as the only water right we had to file for. Our 1981 research caused a delay.

Despite the delays, on April 29, 1982, we issued a check to pay for filing. On April 30, 1982, we mailed the check and water rights form to the Department of Natural Resource and Conservation (DNRC). The DNRC date stamped the form on May 3, 1982 at 11:24 am and the check cleared our bank on May 5, 1982.

Our April 30, 1982 letter that accompanied the form, and a phone call to DNRC, said we lacked two affidavit forms that would follow as soon as possible. We were assured this would cause no difficulty. Follow up documents were gratefully acknowledged by the DNRC, Havre Water Rights Field Office, on September 3, 1982.

Our first indication that there was a problem with the water right was on January 28, 1993, when we received notice of this proposed legislation.

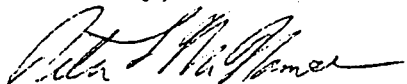
Loss of the domestic well will hurt the Blackfeet Indian Reservation project and possibly adversely affect the future of the Tribe.

There are over 65,000 Roman Catholics in Western Montana, who through the Roman Catholic Bishop Corporation support the Holy Family

Mission, Inc. project. On behalf of the Catholics of Western Montana, the Blackfeet Tribe, and the Holy Family Mission, I urge you to support Senate Bill 310.

Thank you for your attention to this letter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Peter L. McNamee", written in a cursive style.

Peter L. McNamee
Diocesan Finance Officer

cc: Most Reverend Elden F. Curtiss, Bishop of Helena
Members of the Senate Judiciary Committee

HOW TO FILL OUT YOUR STATEMENT OF CLAIM FOR EXISTING WATER RIGHTS

CLAIM NO. 12

DATE 2-17-92

I. BACKGROUND

In 1979, the Montana Legislature passed Senate Bill 76, a law authorizing a process to adjudicate claims of existing water rights. "Existing water rights" originated before July 1, 1973, and were generally established by putting water to beneficial use. As used here, a water right is:

- 1) a specific quantity of water;
- 2) taken from a single water source;
- 3) first used or appropriated on a specific date (commonly referred to as priority date).

Water judges have been appointed to review and confirm valid water right claims in Montana courts. Making complete and accurate claims to your existing water rights is the first step of the adjudication process.

FAILURE TO CLAIM AN EXISTING WATER RIGHT AS REQUIRED BY LAW, WILL RESULT IN A CONCLUSIVE PRESUMPTION THAT YOU HAVE ABANDONED THAT WATER RIGHT.

II. WHO MUST CLAIM THEIR WATER RIGHTS?

Only water rights that originated before July 1, 1973, are to be claimed under Senate Bill 76. If your water rights originated after July 1, 1973, do not file a claim under this program. Water uses that first began after July 1, 1973, should have received either a "Permit to Appropriate Water" or a "Certificate of Water Right" from the Montana Department of Natural Resources and Conservation (DNRC). If you plan a new water development, or expansion of an existing development, contact your nearest DNRC field office to make application for a permit. The field offices are listed on the last page of this booklet.

Also, water users are not required to file claims on some pre-1973 uses, but may file claims voluntarily. These exempt water uses are stockwater and domestic (household) uses of:

- 1) groundwater (wells or developed springs), and;
- 2) instream flow (direct use from a stream without using a ditch, pipe, dam, bucket, pump or other diversion method).

All stockwater uses from surface water diversions, such as reservoirs and ditches, must be claimed.

Water rights in the Powder River Basin for which declarations have already been filed with DNRC are exempt from filing claims.

SPECIAL NOTE ABOUT GROUNDWATER USE

Groundwater Codes passed into law in 1961 required that all groundwater uses beginning after January 1, 1962, be recorded in the County Clerk and Recorder's office on a "Notice of Completion" form. If your groundwater use began between January 1, 1962, and July 1, 1973, and no Notice of Completion was recorded in that time period, follow these instructions:

- 1) obtain Form 602, "Notice of Completion of Groundwater Development", from the County Clerk and Recorder's office or from any DNRC field office;
- 2) complete the form and return it, along with a \$5.00 filing fee, to the DNRC field office nearest you.

If the groundwater use has a flow rate of under 100 gallons per minute, the form will be processed and a "Certificate of Water Right" will be recorded in the county courthouse and sent to the owner. The priority date assigned to the water right will be the date DNRC receives the completed Form 602. A water right claim under Senate Bill 76 can be made.

If the flow rate is over 100 gallons per minute, and the use is for a purpose other than domestic or stockwater, a water right statement of claim under Senate Bill 76 must also be completed and sent to the DNRC field office. Domestic and stockwater uses may be claimed voluntarily.

III. MAKING YOUR WATER RIGHT CLAIM

Claims must be made on forms available at the County Clerk and Recorder's office or any of the DNRC field offices listed on the back of this booklet. The forms are:

IRRIGATION FORM - for water uses for irrigation of field crops, animal pasture, hayland, truck garden, tree farm, etc. This form should also be used to claim the irrigation of a lawn or garden over 2 acres in size and shelterbelts over 5 acres in size.

STOCKWATER FORM - for water uses for livestock. These include poultry, sheep, goats and hogs as well as larger livestock. Fish and wildlife uses of water should not be claimed on this form, but on the **OTHER USES** form.

DOMESTIC FORM - for water uses for individual household purposes such as cooking, washing and laundry. Domestic water uses also include the irrigation of a household lawn, garden and windbreak.

OTHER USES FORM - for water uses including:

Fish Raceways	Geothermal	Mining
Fish & Wildlife	Navigation	Power Generation
Commercial	Fire Protection	Recreation
Industrial	Agricultural	Oil Well
Municipal	Spraying	Flooding

Water uses other than domestic, stockwater, irrigation and those listed above, should also be claimed on this form and briefly explained.

Each water right must be claimed on the form that describes the water's use. If a single water right has more than one use, a separate claim must be filed for each use of the water.

Each completed water right claim should consist of:

- 1) a complete notarized claim form;
- 2) a properly labeled map;
- 3) documentation supporting your claim;
- 4) the filing fee.

As a suggestion, gather all the information you can find about your water right before filling out the claim form. This would include any documentation as well as a map. It may be helpful to complete the map before you fill out the claim form. Suggestions for properly completing a map can be found on pages 5, 7, 9 and 12 of these instructions.

Completed claims must be filed with a field office of the Department of Natural Resources and Conservation. Claims must be filed or postmarked before MID-NIGHT, JANUARY 1, 1982.

A water conversion table, land description guide and list of water measurement data are also on the last page of these instructions. An additional booklet, "A Guidesheet to Water Right Documentation, Water Measurement Calculations, Legal Land Descriptions for Existing Water Right Claims", is available at the field offices or any County Clerk and Recorder's office, and may be helpful. Remember, these are only guides; individual on-site measurement of flows and volumes is the most accurate method of determining water use.

IV. CLAIM FILING FEES

A filing fee of \$40 is required for each water right claim, with these EXCEPTIONS:

- 1) the total fee shall not exceed \$480 per landowner per water division;
- 2) no filing fee is required for claims to water rights contained in a water decree.
- 3) exempt water uses from the same source, claimed voluntarily, can be made for a single \$40 fee. These claims must be filed at the same time. Make checks payable to: Department of Natural Resources and Conservation, or DNRC.

V. HOW TO FILL OUT YOUR CLAIM FORM

After selecting the proper claim form, follow the appropriate step-by-step instructions for completing your claim form. The claim should reflect water use as it existed before July 1, 1973.

The claim form is a court document. *Each form must be filled out completely. Leave no questions unanswered.* When the claim is complete, it must be signed by at least one owner and witnessed by a licensed notary of any state. Fill in your claim with a typewriter or print in ink.

To members of the Senate Judiciary Committee:

I am Echo Garberg of Whitetail and I would like to explain the situation my son Brian and I find ourselves in because of the Court's decision regarding "late filed" water rights.

We live in the northeastern part of Montana, and through our ranch meadows flow the Whitetail, Beaver and Muddy Creeks, all in the drainage area of the lower Missouri Valley.

We are the owners of quite a few water rights filed with the Department of Natural Resources and Conservation. Most of these claims are for stock water use (dams & wells) and some are for irrigation purposes. They were all timely filed - before April 30, 1982 except three. These three are all for flood irrigation covering many acres and they were included in ~~twenty~~ thirty claims that my mother (who owned the land at that time) filed. I prepared the applications for the claims that my husband and I filed, and offered to do the same for my mother, but she declined, preferring to have them done by a local law firm. When she checked some time later with the water rights office at Glasgow, she discovered that the most important claims (for irrigation) - one on the Whitetail, one on the Beaver and one on the Muddy had not been filed. She was then assisted by one of the employees from the office who helped her prepare the claims - but this was in November, 1982 - later than the designated re-filing date of April 30, 1982.

My mother died in 1987, and we became owners of the land, and the water rights. Wanting to clean up the

of irrigation from a diversion ditch and smaller ditches to a system using the diversion ditch and dikes, we checked with the Glasgow office and were told to go ahead - nothing more needed to be done by us unless we changed the point of diversion - which we did not.

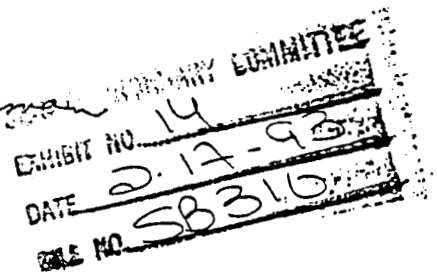
On February 16, 1988 we started working with our ASCS and SCS officers to get the necessary technical assistance and also applied for cost share on the project through a five year long term agreement. Our application was approved, and the Department of Fish, Wildlife and Parks gave their approval for the extra work that had to be done on the stream banks for the diversion ditch.

Although this project is not yet completed (we are doing our own work on it), it has cost thousands of dollars, part of which we received as cost share from the government, and which I presume will have to be repaid if our water right is declared abandoned.

The posted dates of five appropriations included in these three late filed claims are May, 1900, April 1901, January 1903, January 1903 and June 1907. Although not originally claimed by my family, this water has been used since the early 1900's by my grandfather and other members of my family for irrigating hay meadows during the early spring run-off. This is basically the only time we take water from the creek, and then only if we've had enough snow to have any high creek flow.

Because of a re-filing deadline date chosen by the legislature ~~being~~ somehow missed, we stand to lose forever the use of these very important water rights. If something is not done to allow us to retain these legal appropriations, the results will be devastating to our ranching operations far into the future. 42

To: The Senate Judiciary Committee
Senator Bill Yellowtail, Chairman
Re: Support of Senate Bill 310



My name is Pat McNamee. My grandfather homesteaded in central Montana over 100 years ago. He established water rights which were passed on to his family and used continuously ever since. We have not abandoned them in any way.

In 1982 we thought that it was so important to protect our water rights that we hired a lawyer to file them to ensure that everything would be done properly. Unfortunately, the lawyer did not do his duty and the claims were not filed by the deadline.

And now because of the harsh wording of the bill passed by the 1979 legislature, we are told that we have abandoned our water rights. We did not abandon our water rights. We have continuously used these rights to irrigate and raise hay.

A successful ranch benefits the local and state economy.

For example, we harvested the hay with machinery purchased from equipment dealers. We paid wages to the ranch workers. We fed the hay to the livestock and then sold the livestock. We paid truckers to take them to market. We paid income tax on our proceeds. Any money that was left over was put into the local banks. The banks were able to use the money to make loans for people who wanted to buy houses.

Without our water rights this will not be the case. Oh, maybe if we got lucky we could sell to someone who wants to get away from

it all. Someone who might not even be a Montana resident. Someone who doesn't pay Montana income tax. Someone who doesn't need a working ranch. Someone who doesn't need to buy farm equipment. Someone who keeps their money in out of state banks.

We believe producing food is an honorable activity and we would like to continue. In order to do so, we need your support of Senate bill 310.

Please vote for Senate Bill 310.

*Thank you,
Patricia A. McNamara*



United States Department of the Interior



OFFICE OF THE SOLICITOR

P.O. Box 31394

Billings, Montana 59107-1394

Honorable Joseph Mazurek
Attorney General
Department of Justice
State Capital
215 North Sanders
Helena, MT 59620

February 10, 1993

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 15

DATE 2-17-93

BILL NO. SB310

Donald MacIntyre
Chief Legal Counsel
Department of Natural Resources and Conservation
Lee Metcalf Building
1520 East 6th Avenue
Helena, MT 59602

Dear Gentlemen:

Re: S.B. 310--Late Claims--Montana General Stream
Adjudication

We have been advised that the Montana Legislature is considering S.B. 310, a bill which would revive claims filed in the Montana General Stream Adjudication after the filing date, April 30, 1982. The Montana Supreme Court has upheld the constitutionality of the filing deadline and the resulting hardship due to filing water claims after the deadline. In Re Adjudication of Yellowstone River Water Rights, 49 St. Rep. 413, ___ P2d ___, (1992)

Members of your staffs have requested that the United States advise you of our position on S.B. 310. We are also advised that the Senate Judiciary Committee has set a hearing on the bill on Wednesday, February 17, 1993 at 10:00 a.m.

We note that due to the shortness of time and the ongoing transition of the Clinton administration, we are unable to advise you of a "formal" United States' position. However, the following comments are intended to provide assistance to you in your deliberations, but are the comments of the undersigned and are not to be construed as a "formal" position of the United States. In addition, we are endeavoring to obtain a "formal" position and will advise you when that "formal" position is developed.

We have grave concerns regarding S.B. 310. Combined with other exemptions from the adjudication (small domestic wells and small stockwater rights), we believe that serious jurisdictional challenges may be required by the United States. The McCarran Amendment, 43 U.S.C. Section 666 allows joinder of the United States in a general adjudication of all rights to use water in a river basin. We are concerned that in light of the existing exemptions, allowing late claims will seriously prejudice the United States and create serious questions regarding finality.

In addition, on a more practical note, the Northern Cheyenne and Fort Peck Compacts were negotiated in reliance on the adjudication statute as it existed in 1991 and 1985 respectively. The agreement of the United States and the Tribes to protect existing non-Indian water-users was founded upon estimates of existing water use which presumed the invalidity of the late claims. We are advised that there are at least 87 late claims in the Rosebud drainage on the Northern Cheyenne Reservation alone. Enactment of S.B. 310 may be a material change in the fundamental fabric of the negotiations which will require additional negotiation or significant delays in claims processing in the Water Court, jeopardizing the availability of Federal funding for the Northern Cheyenne settlement. Although, we do not have the same Federal funding issues at Fort Peck, the existence of late claims and their validity may prove to undo the hard work of the negotiations.

Montana and the United States are very close to completion of a settlement of the reserved water rights of the United States for three National Park Units in Montana - Yellowstone, Glacier, and Big Hole Battlefield. The issue of revived late claims and their impact on the negotiations has not been assessed and will lead to delays in our ability to complete negotiations. We believe that there is a serious likelihood that we will be unable to complete negotiations in time for this legislative session.

Finally, we are concerned that if S.B. 310 is enacted, the resources which the State, the United States and private water claimants have invested thus far in the adjudication may be wasted. If the United States is compelled to lodge jurisdictional challenges at this late date (which any party may do at any stage of litigation) and if those jurisdictional challenges are successful, the massive investments of money and time by the State, the United States and private parties may be lost and the adjudication not completed.

If you have any questions, please feel free to call me at (406) 657-6331.



Richard K. Aldrich
Field Solicitor
Pacific Northwest Region,
Billings
Department of the Interior

SENATE INDUSTRY COMMITTEE

EXHIBIT NO. 16

DATE 2-17-93

SB310

TESTIMONY ON SENATE BILL NO. 310

My name is Karen Barclay Fagg. I appear on behalf of the Administration. The executive branch of state government is involved in the state water adjudication in many diverse roles. One role is that of a claimant of water rights. The State has some claims that fall into the category of "late claims", that is, claims that were submitted after April 30, 1982. If this bill is passed the Department of State Lands intends on filing claims that have previously not been filed. If this bill is not passed state agencies, such as the Department of State Lands, will review their legal avenues to determine how best to assert their claims in the on-going adjudication. However, because of the potential risks to the adjudication process raised by this Bill the Administration can not stand as a proponent. Rather, I present testimony to you to make you aware of the potential consequences of the legislation should it pass.

Senate Bill No. 310 deals with an unfortunate circumstance in which holders of existing water rights did not file statements of claims to their water rights as required by law. As originally written, the Legislature required that all claims be filed by April 30, 1983. By order of the Montana Supreme Court, on petition by the Attorney General, the date was shortened to April 30, 1982, giving claimants three years in which to file their claims. Following three years of notice and over 250 workshops conducted by the State, the result of the claims filing process was that approximately 206,000 water right claims were filed. Approximately 2% of all the claims filed are so-called late claims. Only about 1/2% of all the claims filed involve irrigated agriculture, i.e., irrigated lands in excess of 40 acres.

The policy question facing this Legislature is whether the risk in reopening the door to litigation challenging the adequacy of the adjudication by passing Senate Bill No. 310 is off-set by the protection attempted to be offered to the affected water users who hold less than 2% of the claims filed in the adjudication.

Senate Bill No. 310 is attempting to undo the forfeiture of water rights that occurred as a result of water users failing to file statements of claims in the on-going adjudication. The testimony of the proponents and the bill itself is understandably couched in terms of abandonment. The argument being that these affected water users are still using their water and have never really abandoned their water rights. Unfortunately, we are not dealing with the issue of whether the affected water rights are or have been abandoned. In 1992 the Montana Supreme Court declared, as a matter of law, that § 85-2-226 is not an abandonment statute, it is a forfeiture statute. The Montana Supreme Court held that "[a]ll claimants were treated equally, provided equal notice, and given equal opportunity to file by the given deadline." It further stated that water rights were

forfeited as a result of owner negligence and not as a result of excessive and unreasonable state action. The forfeiture statute was held to be a proper exercise of the police power of the state, satisfying all of the guidelines necessary to enact a forfeiture statute and complying with all aspects of due process as required by the Montana Constitution and the Constitution of the United States.

As a result of Montana Supreme Court cases, including the one holding that water rights are forfeited by failing to make a timely filed claim, the State is reasonably certain that it has an adjudication that it can defend as a comprehensive adjudication with a final and binding effect on all water rights in Montana. That certainty is diminished by the passage of any legislation affecting the adjudication. Because this bill deals with an essential element of the adjudication process, i.e., the claims filing element, the Legislature must be fully aware of the consequences that result from any legislative amendments. Let me briefly quote to you from the Montana Supreme Court concerning the importance of the claims filing to an adjudication process. "Before water rights can be adjudicated state wide, it is essential that existing rights first be firmly established. Section 85-2-226, MCA, is a reasonable means of compelling comprehensive participation, extinguishing duplicative and exaggerated rights, and ridding local records of stale, unused water claims. These are all necessary to meet the objective of adjudicating Montana's water.

Because the law we deal with in this bill involves a forfeiture statute and because the time for the forfeiture has passed, complex legal issues result in any attempt to undo the forfeiture. The Attorney General has discussed these issues previously.

The Administration's central concerns with this bill are that it not jeopardize the jurisdictional status of the Montana adjudication under the McCarran Amendment; that it not adversely affect any negotiated Compact, or Compacts under negotiation; that it not result in any governmental taking of any water right of a formerly junior water right holder to the forfeited water right within the scope of the Fifth Amendment or Article II, § 29 of the Montana Constitution; that it not result in an increase in the cost of the adjudication by requiring extensive reopening and re-noticing of existing and temporary decrees, extensive re-examination of claims, or extensive re-noticing of the opportunity to file or refile claims; that the due process and equal protection rights of the timely filed claims not be put at risk; that it not establish a precedent whereby water rights, including instream flow rights, can be created by the legislature and interjected into the chain of priorities in a manner inconsistent with the prior appropriation doctrine; and, that those who have participated in a timely fashion not incur further excessive legal expense to have late claims reviewed for their impact on the timely filed water right claims.

In closing, I will point out to the Committee that Montana has spent over \$18 million in providing for an adjudication that federal law allowed us to conduct in the Montana court system, i.e., a McCarran Amendment adjudication. The federal courts, including the United States Supreme Court, have warned Montana that they will look on our adjudication process with exacting scrutiny. Consequently, any amendments we make to the adjudication must be made only after exacting scrutiny. We all sympathize with those who have allowed their water rights to have been forfeited, but in our efforts to find them relief, we must not put at risk the 98% of the timely filed claims. It is unfortunate, but if we err to the detriment of one class of water users in either passing or not passing Senate Bill No. 310, then is it better public policy to do so in favor of the vast majority who have complied with existing law or the minority who have not.

Finally, it is probable that regardless of whether Senate Bill No. 310 is passed the State of Montana will be sued. This Committee, and the Legislature, should weigh the probable outcomes of such litigation and the impacts such suits may have on the State and the adjudication process. If the Bill is not passed indications are that some of the proponents will bring federal lawsuits. Given the 1992 Montana Supreme Court case upholding the constitutionality of the claims registration statute the State generally believes it can defend such actions. If the Bill is passed indications are that the federal government may bring action in federal court over the McCarran Amendment issue, and private parties, such as timely filed claimants and permit holders, may bring actions alleging the taking of property. We do not know what the probability of defending these types of actions are at this time, but our confidence level is less certain than it is in the situation should the Bill not pass.

2-17-93
SB 310

Date: February 17, 1993

To : Senate Judiciary Committee

From : Richard Moe

Two Dist, Montana

RE : Proposed Legislation (SB 310)

Let IT BE STATED THAT:

1. 98% of the claims were filed properly and in compliance with the requirements of the Montana Legislature.
2. There was Sufficient notice provided to claimants for all people Equally to comply with the required regulations on or before April 30, 1982.
3. The State Supreme Court has ruled that the original procedure and dates were approved and acceptable.

Thus:

The Proces Should Go Forward without More Unnecessary Delays.

This Would AVOID:

1. Jeopardizing the ten years of Progress that has been already achieved by claimants who have in good faith complied with the process of water rights adjudication.

Avoid

(2) Cost related to reopening of claims that have been through NO FAULT OF The State not filed.

Avoid

(3) Possible intervention by the Federal Government in Our STATES water adjudication process.

IN Conclusion.

Let the water rights adjudication process go forward as it stands today.

Sincerely,
Richard Moe
Two Dot Mt.

NAME Moran & Roland Chan

ADDRESS B H 2

HOME PHONE 287-5574 WORK PHONE _____

REPRESENTING Moran & Roland Chan

APPEARING ON WHICH PROPOSAL? SB 310

DO YOU: SUPPORT ☒ OPPOSE _____ AMEND _____

COMMENTS:

We feel you as senators do not want to hurt mountians. We filed our water rights and mailed April 30, but they did not get to the courts until May 2. We feel this is very unfair and it would hurt our ranching operation if we were denied it. We have worked all our lives to get our small ranch and would hate to lose it. We would appreciate your support of this bill. Thank you

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-17-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SB 310

SR 15

Name	Representing	Bill No.	Check One Support Oppose
Marvin M Jessop	self	SB 310	✓
Jess Nuttall	Pinedale, MT	SB 310	✓
Heidi A. Nuttall	" "	SB 310	✓
Victor W. Krueger	Augusta, MT	SB 310	✓
Mike M. Kleinsasser	Harlowton, MT	SB 310	✓
Paul P. Waldner	Chester	SB 310	
John H. Anderson	Self	SB-310	✓
Steve Eller	Boulder River Ranch	SB-310	✓
Allen Shumate	Self	SB 310	✓
Tim O'Neill	Arlee MT	SB 310	✓
Loni O'Neill	Arlee MT	SB 310	✓
Bruce Toole	Billings	SB 310	✓
John Connor			
Mark Josephson	Big Timber	SB 310	✓
W O Gerbert III	Deer Horn MT	SB 310	✓
Bill/Barb Wibberding	Drummond MT	SB 310	✓

Marlene Clark

P. Earl Thompson

VISITOR REGISTER

Philipsburg 310

Whitman, MT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-17-93

SENATE COMMITTEE ON SB 310

BILLS BEING HEARD TODAY: SB 310

STR 15

Name	Representing	Bill No.	Check One	
			Support	Oppose
G. T. Allison	SELF	SB 310	☒	☐
JAMES ZIEGLER	☒	☒	☒	☐
NAROLD COCHRAN	-			
Patty Walker	☒	☒	☒	☐
Jeff Walker	☒	☒	☒	☐
Lee Yelin	Land & Water Consulting Several Clients	SB-310	☒	☐
Bob Wipf	Martindale, Celmy	SB-310	☒	☐
Bruce Malcolm	sals - Ranch	☒	☒	☐
CHARLES WIRTH	Self	SB 310	☒	☐
Geo Schuk	Atty Gen			
Mous Teigen	Teigen Land & Ls Co	SB 310	☒	☐
Pete McNamee	Roman Catholic Bishop	SB 310	☒	☐
Pat McNamee	Teigen Land & Livestock	SB 310	☒	☐
Ann Teigen	Teigen Land & Livestock	SB 310	☒	☐
Ron Arnold	Self	310	☒	☐
KATHLEEN FLEURY - PRESENTING WRITTEN AMENDMENT FOR	CALEB SHIELDS ASSISTING - SIGN & JUDGE	310	☒	☐

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-17-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: S.B. 310 Rea

S.B. 15 Christians

Name	Representing	Bill No.	Check One Support Oppose
Lyle B Richards	Myself	SB 310	✓
Richard Moe	Myself		
Patti Lesnik Fishai/mt	self	SB 310	✓
Marion Johns	Self	SB 310	✓
Eugene Morelli	self	SB 310	✓
Darcy DeLong	self	SB 310	✓
VERNON WEST LAKE	A.P.A + SELF	SB 310	✓
James E Breeden	My self	SB 310	✓
Paul M. Brown	myself	SB 310	✓
ECHO GARBERG	MYSELF	SB 310	✓
Raymond Garberg	Self	SB 310	✓
CAMERON MACKENZIE	SELF	SB 310	✓
Shirley Cornelius	self	SB 310	✓
Bill Cornelius	Self	SB 310	✓
Ann Teigen	Teigen Land + Livestock		
Patricia McNamee	"		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

BILLS BEING HEARD TODAY: _____

Check One

Support Oppose

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-17-93

SENATE COMMITTEE ON Water Bill (JUDILIARY)

BILLS BEING HEARD TODAY: SB 310

STR 15

Name	Representing	Bill No.	Check One Support Oppose
Ellen Hargrave	Rancher	SB 310	X
Chris Tweeten	Dept of Justice	SB 310	
John Vandewacre	SELF	SB 310	X
Karen Fagg	Rancher Admin	SB 310	
Byron Doss	self		
Marcia Stargisler	Rancher	SB 310	X
Ceph Cox	Rancher	SB 310	X
J. Brunner	MUR	SB 310	X
Deane Bell	MUR BBA	SB 310	X
Bernie J. Shea	Self Farmer	SB 310	X
John North	DSL	"	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on February 20, 1993,
at 1:30 p.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)

Members Excused: Sen. Towe, Sen. Blaylock

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 418
	SB 345
	SB 371
	SB 391
	SB 344
	SB 351
	SB 425
	SB 392
Executive Action:	SB 418
	SB 345
	SB 371
	SB 391
	SB 344
	SB 351
	SB 392
	SB 246
	SB 310
	SB 400
	SB 425

Vote:

The motion to table SB 345 CARRIED with Chair Yellowtail voting NO.

EXECUTIVE ACTION ON SB 400

Motion/Vote:

Senator Grosfield moved to TABLE SB 400. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 310

Discussion:

Senator Halligan explained the amendments. (Exhibit #11)

Motion:

Senator Halligan moved to AMEND SB 310.

Discussion:

Senator Doherty told the Committee that the subcommittee was comfortable with SB 310, however the proponents were still working on language that may be included in SB 310 on the floor.

Senator Bartlett asked Senator Halligan if people could still file late claims until July 1, 1995. Senator Halligan said they could.

Senator Grosfield told the Committee that the subcommittee members felt that it was very important nothing is done to jeopardize the ongoing process is already in effect, which would include the relationship to the compacts, adjudication, and all the people who properly filed. Senator Grosfield said subordination would not hurt any of those.

Vote:

The motion to amend SB 310 CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Halligan moved SB 310 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 246

Discussion:

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 2-20-93

[illegible]

FCB

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 16
February 22, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 310 (first reading copy -- white), respectfully report that Senate Bill No. 310 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, lines 4 through 13.

Following: "AN ACT"

Strike: remainder of lines 4 through 13 in their entirety

Insert: "PROVIDING FOR THE REMISSION OF CLAIMS TO EXISTING RIGHTS TO THE USE OF WATER FORFEITED PURSUANT TO SECTION 85-2-226, MCA; PROVIDING FOR THE FILING OF CLAIMS IN THE GENERAL WATER RIGHTS ADJUDICATION; PROVIDING FOR STATEWIDE NOTICE OF THE RIGHT TO FILE CLAIMS; PROVIDING FOR A DEADLINE FOR THE ACCEPTANCE OF CLAIMS IN REMISSION; PROVIDING FOR CONDITIONS UPON THE ADJUDICATION OF SUCH CLAIMS; AMENDING SECTIONS 85-2-102, 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234, 85-2-237, AND 85-2-306, MCA; AND PROVIDING AN EFFECTIVE DATE."

2. Page 1, line 15 through page 5, line 15.

Strike: page 1, line 15 through page 5, line 15 in their entirety

Insert: "WHEREAS, Article IX, section 3, of the Montana Constitution provides that all existing rights to the use of any waters for any useful or beneficial purpose are recognized and confirmed; and

WHEREAS, Article IX, section 3, of the Montana Constitution requires the Legislature to provide for the administration, control, and regulation of water rights and to establish a system of centralized records for such rights; and

WHEREAS, the Legislature established a procedure for the general adjudication of existing rights to the use of water and provided in section 85-2-226, MCA, that the failure to file a claim of existing right on or before the deadline established under section 85-2-221, MCA, would establish a conclusive abandonment of the right; and

WHEREAS, the Montana Supreme Court, in In the Matter of the Adjudication of the Water Rights Within the Yellowstone River, 253 Mont. 167, 832 P.2d 1210 (1992), has determined that the failure to file a statement of claim to an existing right to the use of water on or before April 30, 1982, resulted in the forfeiture of that right; and

WHEREAS, it has come to the attention of the Legislature that the forfeiture of water rights for failure to timely file a claim has in some instances caused hardship, and the Legislature accordingly desires to provide water rights claimants with one more opportunity to assert a water rights claim in the general adjudication; and

WHEREAS, in so doing, the Legislature recognizes that the adjudication process will not be completed for many years but that a substantial amount of progress has already occurred in the adjudication, specifically in the area of water rights compacts with Indian tribes and the federal government and in decrees and stipulations involving individual claimants, and thus the Legislature believes that it is necessary to ensure that parties who filed claims on or before April 30, 1982, and holders of federal reserved water rights are not adversely affected by the inclusion of new parties in the adjudication by subjecting the right to file those claims in remission to certain terms and conditions; and

WHEREAS, the Legislature wishes to provide protection for timely filed claimants from incurring additional costs or from being adversely affected by justifiable reliance on the presumption of abandonment; and

WHEREAS, the Legislature wishes to provide a conclusive adjudication of existing water rights; and

WHEREAS, the Legislature recognizes that according a privilege to file additional statements of claim presents a potential for abuse by those who may attempt to refile previously adjudicated claims, and the Legislature thus believes that the courts should deal harshly with any abuses by such measures as, without limitation, the imposition of sanctions under Rule 11, Montana Rules of Civil Procedure; and

WHEREAS, the Legislature determines that the deadline for filing water right claims as provided in this bill appropriately balances the interests at stake in the adjudication.

THEREFORE, the Legislature finds it is appropriate to make the following amendments to sections 85-2-102, 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234, 85-2-237, and 85-2-306, MCA, in order to provide for the acceptance of additional statements of claim to existing water rights under the conditions set forth in this bill."

3. Page 5, line 18 through page 11, line 5.

Strike: everything following the enacting clause

Insert: "Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(10) "Ground water" means any water that is beneath the ground surface.

(11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity. For purposes of 85-2-221(3), person includes predecessors in interest.

(13) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(14) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(15) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(16) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(17) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

(18) "Water division" means a drainage basin as defined in 3-7-102.

(19) "Water judge" means a judge as provided for in Title 3, chapter 7.

(20) "Water master" means a master as provided for in Title 3, chapter 7.

(21) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)

85-2-102. (Effective July 1, 1999) Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(9) "Ground water" means any water that is beneath the ground surface.

(10) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(11) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity. For purposes of 85-2-221(3), person includes predecessors in interest.

(12) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(13) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(14) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(15) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(16) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

(17) "Water division" means a drainage basin as defined in 3-7-102.

(18) "Water judge" means a judge as provided for in Title 3, chapter 7.

(19) "Water master" means a master as provided for in Title 3, chapter 7.

(20) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-211, MCA, is amended to read:

"85-2-211. Petition by attorney general. Within 20 days after May 11, 1979, the state of Montana upon relation of the attorney general shall petition the Montana supreme court to require all persons claiming a right within a water division to file a claim of the right as provided in 85-2-221(1)."

Section 3. Section 85-2-213, MCA, is amended to read:

"85-2-213. Notice of order -- additional filing period. (1) To assure that all persons who may claim an existing water right are notified of the requirement to file a claim of that right, the Montana supreme court shall give notice of the order as follows:

(1)(a) It shall cause the order, printed in not less than 10-point type, to be placed in a prominent and conspicuous place in all daily newspapers of the state and in at least one newspaper published in each county of the state within 30 days after the Montana supreme court order as provided in 85-2-212 and in April of 1980, 1981, 1982, and 1983.

(2)(b) It shall cause the order, in writing, to be placed in a prominent and conspicuous location in each county courthouse in the state within 30 days after the Montana supreme court order as provided in 85-2-212.

(3)(c) It shall provide a sufficient number of copies of the order to the county treasurers before October 15, 1979, 1980, 1981, and 1982, and the county treasurers shall enclose a copy of the order with each statement of property taxes mailed in 1979, 1980, 1981, and 1982. In the implementation of this subsection, the department shall provide reimbursement to each county treasurer for the reasonable additional costs incurred by the treasurer arising from the inclusion of the order required by this section. The department shall be reimbursed for such costs from the water right adjudication account created by 85-2-241.

(4)(d) It shall provide copies of the order, in writing, to the press services with offices located in Helena within 30 days after the Montana supreme court order as provided in 85-2-212, and in April of 1980, 1981, 1982, and 1983.

(5)(e) It shall, under authority granted to the states by 43 U.S.C. 666, provide for service of the petition and order upon the United States attorney general or his designated representative.

(6)(f) It may also in its discretion give notice of the order in any other manner that will carry out the purposes of this section.

(7)(g) It may also in its discretion order that the department or the water judge assist the Montana supreme court in the carrying out of this section.

(2)(a) To assure that all persons who failed to file a claim of existing right under 85-2-221(1) are provided notice of the opportunity to file a claim on or before July 1, 1995, as provided in 85-2-221(3), the department shall provide notice as follows:

(i) It shall, in October 1993, April and October 1994, and April 1995, cause a notice of the right to file a claim in accordance with 85-2-221(3) to be published in all daily newspapers in the state and in at least one newspaper in each county in the state.

(ii) It shall, in October 1993, April and October 1994, and April 1995, provide copies of the notice, in writing, to the press services with offices located in Helena.

(iii) It shall, by October 1993, provide copies of the notice to the United States attorney general and to all Indian tribes in Montana.

(iv) It shall cause copies of the notice to be posted in a conspicuous location in each county courthouse and department field office in the state.

(v) It may also, in its discretion, provide notice in any other manner that will effectuate the purposes of 85-2-221(3).

(b) The water court shall include notice of 85-2-221(3) in all notices, decrees, or orders issued pursuant to 85-2-231 or 85-2-232 after [the effective date of this act] until July 1, 1995.

(3) Notice given in accordance with subsection (2) must at a minimum indicate that any person who failed to file a claim of existing right before April 30, 1982, may file such claim by physically filing it with the department on or before July 1, 1995, or sending it by United States mail, postmarked on or before July 1, 1995. Additionally, the notice must indicate that a failure to file or mail the claim results in the forfeiture for all time of any existing rights to the use of water that are not claimed in accordance with the provisions of 85-2-221."

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Section 4. Section 85-2-221, MCA, is amended to read:

"85-2-221. Filing of claim of existing water right. (1) A person claiming an existing right, unless exempted under 85-2-222 or unless an earlier filing date is ordered as provided in 85-2-212, shall file with the department no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) The department shall file a copy of each statement of claim with the clerk of the district court for the judicial district in which the diversion is made or, if there is a claimed right with no diversion, the department shall file a copy of the statement of claim with the clerk of the district court of the judicial district in which the use occurs.

(3) Subject to certain terms and conditions, the legislature intends to provide for the remission of the forfeiture of existing rights to the use of water caused by the failure to comply with subsection (1). Accordingly, a person who failed to file a claim of an existing water right on or before April 30, 1982, may file with the department a claim of an existing water right on or before July 1, 1995, on forms provided by the department. This section is not intended to prevent a person who may have filed a claim of an existing water right on or before April 30, 1982, from filing an additional claim under this section if and to the extent that the additional right claimed is not the same as the right that was the subject of a previous claim. Claims must be physically submitted to the department or sent by United States mail, postmarked on or before the deadline set forth in this subsection, in order to be considered timely. Within 30 days of receipt, the department shall file copies of timely filed claims with the appropriate clerk of court as provided in subsection (2), and those claims are then subject to adjudication by the district courts as any other claim of existing right. The claimant is then subject to all rights and obligations of any other party, except that:

(a) any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995, must have the claim incorporated into the adjudication, subject to all prior proceedings, and does not, except as otherwise provided in 85-2-237, have the right to reopen decrees previously entered or to object to matters previously determined on the merits by the water court after objection; and

(b) any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995, does not have the right or standing to object to any water rights compact reached in accordance with part 7 of this chapter that is ratified by the legislature prior to [the effective date of this act] or to claim

protection under any provision of such a compact that subordinates the use of a water right recognized in the compact to a right recognized under state law; and

(c) any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995, is liable for any costs and damages to any other claimant caused by the latter's actions in reasonable reliance upon the former's failure to file a claim on or before April 30, 1982, and upon the conclusive presumption of abandonment provided in 85-2-226; and

(d) any existing right to the use of water that is the subject of a claim filed after April 30, 1982, is subordinate to:

(i) all filed claims finally adjudicated to be valid;

(ii) all reserved water right compacts negotiated pursuant to this chapter;

(iii) all permits and reservations of water issued pursuant to this chapter if and to the extent that the permitholder or reservation holder files an objection under this part and proves that the permitholder or reservation holder reasonably relied upon the failure of the claimant to file a claim on or before April 30, 1982.

(4) The department and the district courts may not accept any statements of claim physically submitted or postmarked after July 1, 1995."

Section 5. Section 85-2-225, MCA, is amended to read:

"85-2-225. Filing fee -- processing fee for remitted claims. (1) Each claim filed under 85-2-221 or 85-2-222 must be accompanied by a filing fee in the amount of \$40, subject to the following exceptions:

(a) the total filing fees for all claims filed by one person in any one water court division may not exceed \$480; and

(b) no filing fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and which that is accompanied by a copy of that decree or pertinent portion thereof.

(2) A claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed must be accompanied by a filing fee in the amount of \$40. Exempt claims for a single development with several uses if filed simultaneously may be accompanied by a filing fee in the amount of \$40.

(3) (a) Except as provided in subsection (3)(b), in addition to the filing fee set forth in subsection (1), each statement of claim filed under 85-2-221(3) must be accompanied by a processing fee in the amount of \$300.

(b) For a statement of claim that was filed after April 30, 1982, but prior to [the effective date of this act] or for a statement of claim filed by a state agency, the processing fee provided for in subsection (3)(a) must be paid on or before the

entry of the temporary preliminary decree or the preliminary decree for the basin for which the claim is filed."

Section 6. Section 85-2-226, MCA, is amended to read:

"85-2-226. Abandonment by failure to file claim. The failure to file a claim of an existing right as required by 85-2-221(1) establishes a conclusive presumption of abandonment of that right."

Section 7. Section 85-2-234, MCA, is amended to read:

"85-2-234. Final decree. (1) The water judge shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the water judge shall enter it as the final decree.

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233; provided that the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree ~~shall~~ must establish the existing rights and priorities within the water judge's jurisdiction of ~~persons required by who have filed a claim in accordance with 85-2-221 to file a claim for an existing right,~~ of persons required to file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree ~~shall~~ must establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all water rights and their relative priorities.

(5) The final decree ~~shall~~ must state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree ~~shall~~ must state:

- (a) the name and post-office address of the owner of the right;
- (b) the amount of water included in the right, as follows:
 - (i) by flow rate for direct flow rights, such as irrigation rights;

(ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or

(iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land, if any, to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the inclusive dates during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

(7) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree ~~shall~~ must state:

(a) the name and mailing address of the holder of the right;

(b) the source or sources of water included in the right;

(c) the quantity of water included in the right;

(d) the date of priority of the right;

(e) the purpose for which the water included in the right is currently used, if at all;

(f) the place of use and a description of the land, if any, to which the right is appurtenant;

(g) the place and means of diversion, if any; and

(h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702.

(8) Clerical mistakes in a final decree may be corrected at any time on the initiative of the water judge or on the petition of any person who possesses a water right. The water judge shall order the notice of a correction proceeding as he determines to be appropriate to advise all persons who may be affected by the correction. An order of the water judge making or denying a clerical correction is subject to appellate review."

Section 8. Section 85-2-237, MCA, is amended to read:

"85-2-237. Reopening and review of decrees. (1) The After July 1, 1995, the water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all preliminary or final decrees:

(a) that have been issued by the water courts but have not been noticed throughout the water divisions; or

(b) for basins for which claims have been filed under 85-2-221(3).

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

- (i) within the basin for which the decree was entered; or
- (ii) in other basins that are hydrologically connected to sources within the basin for which the decree was entered.

(b) A person may not raise an objection to a matter in a reopened decree if ~~he~~ the person was a party to the matter when the matter was previously litigated and resolved as the result of the previous objection process, unless the objection is allowed for any of the following reasons:

- (i) mistake, inadvertence, surprise, or excusable neglect;
- (ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;
- (iii) fraud, misrepresentation, or other misconduct of an adverse party;
- (iv) the judgment is void;
- (v) any other reason justifying relief from the operation of the judgment.

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice by mail of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a preliminary or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation ~~which that~~ cover the water division or divisions in which the decreed basin is located.

(5) No objection may cause a reopening and review of a claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for extension is made within the original 180-day period or any extension of it.

(6) The water judge shall provide notice to the claimant of any timely objection to ~~his~~ the claim and, after further reasonable notice to the claimant, the objector or objectors, and other interested persons, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil

Procedure. On an order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the evidence before him, including dismissal of the objection or modification of the portion of the decree describing the contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the preliminary decree has been made a final decree."

Section 9. Section 85-2-306, MCA, is amended to read:

"85-2-306. (Temporary) Exceptions to permit requirements - fee. (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders and pay a filing fee. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation ~~shall be~~ is the date of refiled a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate ~~shall~~ must be sent to the

appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) of ~~this section~~, with the department to perfect the water right. The filing of a claim of ~~existing water right~~ pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation ~~shall be~~ is the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream ~~which that~~ historically has flowed continuously at during all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113.

(5) In addition to the filing fee prescribed by the board by rule pursuant to 85-2-113, a person filing a notice under subsection (1) shall pay a \$10 fee, and the department shall deposit \$10 of each filing fee collected pursuant to subsection (1) in the ground water assessment account, established in 85-2-905, within the state special revenue fund. (Terminates July 1, 1993--sec. 22, Ch. 769, L. 1991.)

85-2-306. (Effective July 1, 1993) Exceptions to permit requirements. (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation ~~shall be~~ is the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate ~~shall~~ must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) ~~of this section~~, with the department to perfect the water right. The filing of a claim ~~of existing~~

~~water right~~ pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation ~~shall be~~ is the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream ~~which that~~ historically has flowed continuously at during all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113."

NEW SECTION. Section 10. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

NEW SECTION. Section 11. Effective date. [This act] is effective July 1, 1993."

-END-

Amendments to Senate Bill No. 310
First Reading Copy

Requested by Senator Halligan for the SB 310 Subcommittee
For the Committee on Judiciary

Prepared by Valencia Lane
February 22, 1993

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 11

DATE 2-20-93

BILL NO. SB310

1. Title, lines 4 through 13.

Following: "AN ACT"

Strike: remainder of lines 4 through 13 in their entirety

Insert: "PROVIDING FOR THE REMISSION OF CLAIMS TO EXISTING RIGHTS TO THE USE OF WATER FORFEITED PURSUANT TO SECTION 85-2-226, MCA; PROVIDING FOR THE FILING OF CLAIMS IN THE GENERAL WATER RIGHTS ADJUDICATION; PROVIDING FOR STATEWIDE NOTICE OF THE RIGHT TO FILE CLAIMS; PROVIDING FOR A DEADLINE FOR THE ACCEPTANCE OF CLAIMS IN REMISSION; PROVIDING FOR CONDITIONS UPON THE ADJUDICATION OF SUCH CLAIMS; AMENDING SECTIONS 85-2-102, 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234, 85-2-237, AND 85-2-306, MCA; AND PROVIDING AN EFFECTIVE DATE."

2. Page 1, line 15 through page 5, line 15.

Strike: page 1, line 15 through page 5, line 15 in their entirety

Insert: "WHEREAS, Article IX, section 3, of the Montana Constitution provides that all existing rights to the use of any waters for any useful or beneficial purpose are recognized and confirmed; and

WHEREAS, Article IX, section 3, of the Montana Constitution requires the Legislature to provide for the administration, control, and regulation of water rights and to establish a system of centralized records for such rights; and

WHEREAS, the Legislature established a procedure for the general adjudication of existing rights to the use of water and provided in section 85-2-226, MCA, that the failure to file a claim of existing right on or before the deadline established under section 85-2-221, MCA, would establish a conclusive abandonment of the right; and

WHEREAS, the Montana Supreme Court, in In the Matter of the Adjudication of the Water Rights Within the Yellowstone River, 253 Mont. 167, 832 P.2d 1210 (1992), has determined that the failure to file a statement of claim to an existing right to the use of water on or before April 30, 1982, resulted in the forfeiture of that right; and

WHEREAS, it has come to the attention of the Legislature that the forfeiture of water rights for failure to timely file a claim has in some instances caused hardship, and the Legislature accordingly desires to provide water rights claimants with one more opportunity to assert a water rights claim in the general adjudication; and

WHEREAS, in so doing, the Legislature recognizes that the adjudication process will not be completed for many

years but that a substantial amount of progress has already occurred in the adjudication, specifically in the area of water rights compacts with Indian tribes and the federal government and in decrees and stipulations involving individual claimants, and thus the Legislature believes that it is necessary to ensure that parties who filed claims on or before April 30, 1982, and holders of federal reserved water rights are not adversely affected by the inclusion of new parties in the adjudication by subjecting the right to file those claims in remission to certain terms and conditions; and

WHEREAS, the Legislature wishes to provide protection for timely filed claimants from incurring additional costs or from being adversely affected by justifiable reliance on the presumption of abandonment; and

WHEREAS, the Legislature wishes to provide a conclusive adjudication of existing water rights; and

WHEREAS, the Legislature recognizes that according a privilege to file additional statements of claim presents a potential for abuse by those who may attempt to refile previously adjudicated claims, and the Legislature thus believes that the courts should deal harshly with any abuses by such measures as, without limitation, the imposition of sanctions under Rule 11, Montana Rules of Civil Procedure; and

WHEREAS, the Legislature determines that the deadline for filing water right claims as provided in this bill appropriately balances the interests at stake in the adjudication.

THEREFORE, the Legislature finds it is appropriate to make the following amendments to sections 85-2-102, 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234, 85-2-237, and 85-2-306, MCA, in order to provide for the acceptance of additional statements of claim to existing water rights under the conditions set forth in this bill."

3. Page 5, line 18 through page 11, line 5.

Strike: everything following the enacting clause

Insert: "Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and

recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(10) "Ground water" means any water that is beneath the ground surface.

(11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity. For purposes of 85-2-221(3), person includes predecessors in interest.

(13) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(14) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(15) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(16) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(17) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

(18) "Water division" means a drainage basin as defined in 3-7-102.

(19) "Water judge" means a judge as provided for in Title 3, chapter 7.

(20) "Water master" means a master as provided for in Title 3, chapter 7.

(21) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)

85-2-102. (Effective July 1, 1999) Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(9) "Ground water" means any water that is beneath the ground surface.

(10) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(11) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity. For purposes of 85-2-221(3), person includes predecessors in interest.

(12) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(13) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(14) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(15) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(16) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

(17) "Water division" means a drainage basin as defined in 3-7-102.

(18) "Water judge" means a judge as provided for in Title 3, chapter 7.

(19) "Water master" means a master as provided for in Title 3, chapter 7.

(20) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

{Internal References to 85-2-102:

x82-4-355

x85-2-141

x85-2-419}

Section 2. Section 85-2-211, MCA, is amended to read:

"85-2-211. **Petition by attorney general.** Within 20 days after May 11, 1979, the state of Montana upon relation of the attorney general shall petition the Montana supreme court to require all persons claiming a right within a water division to file a claim of the right as provided in 85-2-221(1)."

{Internal References to 85-2-211:

x85-2-701}

Section 3. Section 85-2-213, MCA, is amended to read:

"85-2-213. **Notice of order -- additional filing period.** (1) To assure that all persons who may claim an existing water right are notified of the requirement to file a claim of that right, the Montana supreme court shall give notice of the order as follows:

(1)(a) It shall cause the order, printed in not less than 10-point type, to be placed in a prominent and conspicuous place in all daily newspapers of the state and in at least one newspaper published in each county of the state within 30 days after the Montana supreme court order as provided in 85-2-212 and in April of 1980, 1981, 1982, and 1983.

(2)(b) It shall cause the order, in writing, to be placed in a prominent and conspicuous location in each county courthouse in the state within 30 days after the Montana supreme court order as provided in 85-2-212.

(3)(c) It shall provide a sufficient number of copies of the order to the county treasurers before October 15, 1979, 1980, 1981, and 1982, and the county treasurers shall enclose a copy of the order with each statement of property taxes mailed in 1979, 1980, 1981, and 1982. In the implementation of this subsection, the department shall provide reimbursement to each county

treasurer for the reasonable additional costs incurred by the treasurer arising from the inclusion of the order required by this section. The department shall be reimbursed for such costs from the water right adjudication account created by 85-2-241.

~~(4)~~(d) It shall provide copies of the order, in writing, to the press services with offices located in Helena within 30 days after the Montana supreme court order as provided in 85-2-212, and in April of 1980, 1981, 1982, and 1983.

~~(5)~~(e) It shall, under authority granted to the states by 43 U.S.C. 666, provide for service of the petition and order upon the United States attorney general or his designated representative.

~~(6)~~(f) It may also in its discretion give notice of the order in any other manner that will carry out the purposes of this section.

~~(7)~~(g) It may also in its discretion order that the department or the water judge assist the Montana supreme court in the carrying out of this section.

(2)(a) To assure that all persons who failed to file a claim of existing right under 85-2-221(1) are provided notice of the opportunity to file a claim on or before July 1, 1995, as provided in 85-2-221(3), the department shall provide notice as follows:

(i) It shall, in October 1993, April and October 1994, and April 1995, cause a notice of the right to file a claim in accordance with 85-2-221(3) to be published in all daily newspapers in the state and in at least one newspaper in each county in the state.

(ii) It shall, in October 1993, April and October 1994, and April 1995, provide copies of the notice, in writing, to the press services with offices located in Helena.

(iii) It shall, by October 1993, provide copies of the notice to the United States attorney general and to all Indian tribes in Montana.

(iv) It shall cause copies of the notice to be posted in a conspicuous location in each county courthouse and department field office in the state.

(v) It may also, in its discretion, provide notice in any other manner that will effectuate the purposes of 85-2-221(3).

(b) The water court shall include notice of 85-2-221(3) in all notices, decrees, or orders issued pursuant to 85-2-231 or 85-2-232 after [the effective date of this act] until July 1, 1995.

(3) Notice given in accordance with subsection (2) must at a minimum indicate that any person who failed to file a claim of existing right before April 30, 1982, may file such claim by physically filing it with the department on or before July 1, 1995, or sending it by United States mail, postmarked on or before July 1, 1995. Additionally, the notice must indicate that a failure to file or mail the claim results in the forfeiture for all time of any existing rights to the use of water that are not claimed in accordance with the provisions of 85-2-221."

{Internal References to 85-2-213: None.}

Section 4. Section 85-2-221, MCA, is amended to read:

"85-2-221. Filing of claim of existing water right. (1) A person claiming an existing right, unless exempted under 85-2-222 or unless an earlier filing date is ordered as provided in 85-2-212, shall file with the department no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) The department shall file a copy of each statement of claim with the clerk of the district court for the judicial district in which the diversion is made or, if there is a claimed right with no diversion, the department shall file a copy of the statement of claim with the clerk of the district court of the judicial district in which the use occurs.

(3) Subject to certain terms and conditions, the legislature intends to provide for the remission of the forfeiture of existing rights to the use of water caused by the failure to comply with subsection (1). Accordingly, a person who failed to file a claim of an existing water right on or before April 30, 1982, may file with the department a claim of an existing water right on or before July 1, 1995, on forms provided by the department. This section is not intended to prevent a person who may have filed a claim of an existing water right on or before April 30, 1982, from filing an additional claim under this section if and to the extent that the additional right claimed is not the same as the right that was the subject of a previous claim. Claims must be physically submitted to the department or sent by United States mail, postmarked on or before the deadline set forth in this subsection, in order to be considered timely. Within 30 days of receipt, the department shall file copies of timely filed claims with the appropriate clerk of court as provided in subsection (2), and those claims are then subject to adjudication by the district courts as any other claim of existing right. The claimant is then subject to all rights and obligations of any other party, except that:

(a) any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995, must have the claim incorporated into the adjudication, subject to all prior proceedings, and does not, except as otherwise provided in 85-2-237, have the right to reopen decrees previously entered or to object to matters previously determined on the merits by the water court after objection; and

(b) any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995, does not have the right or standing to object to any water rights compact reached in accordance with part 7 of this chapter that is ratified by the legislature prior to [the effective date of this act] or to claim protection under any provision of such a compact that subordinates the use of a water right recognized in the compact to a right recognized under state law; and

(c) any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995, is liable for any costs and damages to any other claimant caused by the latter's actions in reasonable reliance upon the former's failure to file a claim on or before April 30, 1982, and upon the conclusive presumption of abandonment provided in 85-2-226; and

(d) any existing right to the use of water that is the

subject of a claim filed after April 30, 1982, is subordinate to:

- (i) all filed claims finally adjudicated to be valid;
- (ii) all reserved water right compacts negotiated pursuant to this chapter;
- (iii) all permits and reservations of water issued pursuant to this chapter if and to the extent that the permitholder or reservation holder files an objection under this part and proves that the permitholder or reservation holder reasonably relied upon the failure of the claimant to file a claim on or before April 30, 1982.

(4) The department and the district courts may not accept any statements of claim physically submitted or postmarked after July 1, 1995."

{ Internal References to 85-2-221:

A85-2-211	x85-2-222	x85-2-225	x(2)	A85-2-226
x85-2-227	A85-2-234	x85-2-243		A85-2-306 (2)}

Section 5. Section 85-2-225, MCA, is amended to read:

"85-2-225. Filing fee -- processing fee for remitted claims. (1) Each claim filed under 85-2-221 or 85-2-222 must be accompanied by a filing fee in the amount of \$40, subject to the following exceptions:

(a) the total filing fees for all claims filed by one person in any one water court division may not exceed \$480; and

(b) no filing fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and ~~which~~ that is accompanied by a copy of that decree or pertinent portion thereof.

(2) A claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed must be accompanied by a filing fee in the amount of \$40. Exempt claims for a single development with several uses if filed simultaneously may be accompanied by a filing fee in the amount of \$40.

(3) (a) Except as provided in subsection (3)(b), in addition to the filing fee set forth in subsection (1), each statement of claim filed under 85-2-221(3) must be accompanied by a processing fee in the amount of \$300.

(b) For a statement of claim that was filed after April 30, 1982, but prior to [the effective date of this act] or for a statement of claim filed by a state agency, the processing fee provided for in subsection (3)(a) must be paid on or before the entry of the temporary preliminary decree or the preliminary decree for the basin for which the claim is filed."

{ Internal References to 85-2-225: None. }

Section 6. Section 85-2-226, MCA, is amended to read:

"85-2-226. Abandonment by failure to file claim. The failure to file a claim of an existing right as required by 85-2-221(1) establishes a conclusive presumption of abandonment of that right."

{ Internal References to 85-2-226: None. }

Section 7. Section 85-2-234, MCA, is amended to read:

"85-2-234. Final decree. (1) The water judge shall, on the basis of the preliminary decree and on the basis of any hearing

that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the water judge shall enter it as the final decree.

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233; provided that the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree ~~shall~~ must establish the existing rights and priorities within the water judge's jurisdiction of persons ~~required by who have filed a claim in accordance with 85-2-221 to file a claim for an existing right~~, of persons required to file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree ~~shall~~ must establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all water rights and their relative priorities.

(5) The final decree ~~shall~~ must state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree ~~shall~~ must state:

- (a) the name and post-office address of the owner of the right;
- (b) the amount of water included in the right, as follows:
 - (i) by flow rate for direct flow rights, such as irrigation rights;
 - (ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or
 - (iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;
- (c) the date of priority of the right;
- (d) the purpose for which the water included in the right is used;
- (e) the place of use and a description of the land, if any, to which the right is appurtenant;
- (f) the source of the water included in the right;
- (g) the place and means of diversion;
- (h) the inclusive dates during which the water is used each year;
- (i) any other information necessary to fully define the nature and extent of the right.

(7) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the

final decree ~~shall~~ must state:

- (a) the name and mailing address of the holder of the right;
- (b) the source or sources of water included in the right;
- (c) the quantity of water included in the right;
- (d) the date of priority of the right;
- (e) the purpose for which the water included in the right is currently used, if at all;
- (f) the place of use and a description of the land, if any, to which the right is appurtenant;
- (g) the place and means of diversion, if any; and
- (h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702.

(8) Clerical mistakes in a final decree may be corrected at any time on the initiative of the water judge or on the petition of any person who possesses a water right. The water judge shall order the notice of a correction proceeding as he determines to be appropriate to advise all persons who may be affected by the correction. An order of the water judge making or denying a clerical correction is subject to appellate review."

{ Internal References to 85-2-234:

xx85-2-141 (2) x85-2-231 }

Section 8. Section 85-2-237, MCA, is amended to read:

"85-2-237. **Reopening and review of decrees.** (1) The After July 1, 1995, the water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all preliminary or final decrees:

(a) that have been issued by the water courts but have not been noticed throughout the water divisions; or

(b) for basins for which claims have been filed under 85-2-221(3).

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the basin for which the decree was entered; or

(ii) in other basins that are hydrologically connected to sources within the basin for which the decree was entered.

(b) A person may not raise an objection to a matter in a reopened decree if he the person was a party to the matter when the matter was previously litigated and resolved as the result of the previous objection process, unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void;

(v) any other reason justifying relief from the operation of the judgment.

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice by mail of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a preliminary or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation ~~which~~ that cover the water division or divisions in which the decreed basin is located.

(5) No objection may cause a reopening and review of a claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for extension is made within the original 180-day period or any extension of it.

(6) The water judge shall provide notice to the claimant of any timely objection to ~~his~~ the claim and, after further reasonable notice to the claimant, the objector or objectors, and other interested persons, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the evidence ~~before him~~, including dismissal of the objection or modification of the portion of the decree describing the contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the preliminary decree has been made a final decree."

{Internal References to 85-2-237: None.}

Section 9. Section 85-2-306, MCA, is amended to read:

"85-2-306. (Temporary) **Exceptions to permit requirements - fee.** (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, except that a combined appropriation from the same source from two or more wells or

developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders and pay a filing fee. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation ~~shall~~ is the date of refileing a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate ~~shall~~ must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) ~~of this section~~, with the department to perfect the water right. The filing of a claim ~~of existing water right~~ pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation ~~shall be~~ is the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream ~~which~~ that historically has flowed continuously ~~at~~ during all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a

correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113.

(5) In addition to the filing fee prescribed by the board by rule pursuant to 85-2-113, a person filing a notice under subsection (1) shall pay a \$10 fee, and the department shall deposit \$10 of each filing fee collected pursuant to subsection (1) in the ground water assessment account, established in 85-2-905, within the state special revenue fund. (Terminates July 1, 1993--sec. 22, Ch. 769, L. 1991.)

85-2-306. (Effective July 1, 1993) Exceptions to permit requirements. (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation ~~shall be~~ is the date of refiled a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate ~~shall~~ must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1,

1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) ~~of this section~~, with the department to perfect the water right. The filing of a claim ~~of existing water right~~ pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation ~~shall be~~ is the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream ~~which~~ that historically has flowed continuously ~~at~~ during all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113."

{Internal References to 85-2-306:

xx85-2-102	(2)	x85-2-113	x85-2-236	xx85-2-302	(2)
x85-2-322		x85-2-401	x85-2-905		

NEW SECTION. Section 10. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

NEW SECTION. Section 11. {standard} Effective date. [This act] is effective July 1, 1993."

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ----- DATE READ

SB0073	DEVLIN, GERRY		CREATE PENALTY FOR FAILURE TO MAINTAIN RAILROAD RIGHT-OF-WAY OR MAKE PAYMENT				
	1/25	2/09		CONCUR	2/9	VOTE: 15-1	2/11
SB0085	KEATING, TOM		RECLASSIFY STATE HAIL INSURANCE PROGRAM AS ENTERPRISE FUND				
	1/22	2/04		CONCUR	2/4	VOTE: 15-0	2/06
SB0088	BECK, TOM		CLARIFYING THAT THE STATE PRISON DAIRY MAY BE LICENSED				
	1/14	1/21		CONCUR	2/2	VOTE: 16-0	2/04
SB0097	HERTEL, JOHN		CANAL PRIVATIZATION PROGRAM AMENDMENT				
	1/18	2/02		CONCUR	2/2	VOTE: 16-0	2/04
SB0098	REA, JACK		REVISE SEED DEALER PENALTIES; CREATE SEED ACCOUNT IN STATE SPECIAL REV FUND				
	1/16	1/28		CONCUR AS AMENDED	1/28	VOTE: 14-2	2/02
SB0098	REA, JACK		REVISE SEED DEALER PENALTIES; CREATE SEED ACCOUNT IN STATE SPECIAL REV FUND				
	2/09			CONCUR AS AMENDED	3/16	VOTE: 15-1	3/18
SB0188	HOCKETT, BOB		AUTHORIZING COMMERCIAL LEASEHOLDERS TO SUBLEASE STATE LAND				
	1/28	2/11		CONCUR	2/11	VOTE: 15-0	2/13
SB0259	HARP, JOHN		CLARIFY COST OF RELOCATING OVERHEAD UTILITY LINE				
	2/23	3/02	3/4	CONCUR	3/4	VOTE: 16-0	3/05
SB0279	SWYSGOOD, CHUCK		IRRIGATION DISTRICTS -- SURVEY REQUIREMENTS AND LIABILITY LIMITS				
	2/23	3/02		CONCUR	3/2	VOTE: 16-0	3/03
SB0310	REA, JACK		PROVIDE FOR PROCEDURES FOR REMISSION OF AND FILING OF WATER RIGHT CLAIMS				
	2/24	3/11		CONCUR AS AMENDED	3/25	VOTE: 15-1	3/27
SB0328	HERTEL, JOHN		CLARIFY CROP AND GRAIN SPRAYING AND DUSTING LIEN PROVISIONS				
	2/23	3/02		CONCUR	3/2	VOTE: 14-2	3/03
SB0334	BECK, TOM		ESTABLISH PESTICIDE AND PESTICIDE CONTAINER DISPOSAL AND RECYCLING PROGRAM				
	2/23	3/09		CONCUR AS AMENDED	3-16	VOTE: 13-3	3/18

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By CHAIRMAN VERN KELLER, on March 11, 1993, at
3:00 P.M.

ROLL CALL

Members Present:

Rep. Vern Keller, Chairman (R)
Rep. Joe Barnett, Vice Chairman (R)
Rep. Shiell Anderson (R)
Rep. Bob Bachini (D)
Rep. Jody Bird (D)
Rep. Ervin Davis (D)
Rep. Bill Endy (D)
Rep. Harriet Hayne (R)
Rep. Don Larson (D)
Rep. Gary Mason (R)
Rep. Bill Rehbein (R)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Wilbur Spring (R)
Rep. Wayne Stanford (D)
Rep. Jay Stovall (R)

Members Excused: None

Members Absent: None

Staff Present: Dave Bohyer, Legislative Council
Jaelene Racicot, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 310
Executive Action: None

HEARING ON SB 310

Opening Statement by Sponsor:

SEN. JACK "DOC" REA, SD 38, Three Forks, stated that SB 310 deals
with water rights that were late claims and therefore forfeited.
He said that in 1970 the constitutional convention reviewed the

provisions addressing water rights. On July 1, 1973 the new Constitution said that all existing rights to the use of water are recognized and confirmed. In 1977, the legislature appointed an interim committee to study the issue of water rights. SEN. REA indicated that as a result of the study, the Montana Water Use Act was enacted in 1979. Under the provisions of the Act all existing water rights had to be filed by June 30, 1983. The Supreme Court wanted an earlier date and the parties settled on January 1, 1982. The final decision was that all existing water rights had to be filed by 5:00 P.M., April 30, 1982. All water rights that were not filed with the Department of Natural Resources on April 30, 1982, were then listed as conclusively abandoned rights. SEN. REA stated that SB 310 would address the problems that many individuals have incurred for not filing their water rights on time. EXHIBIT 1

Proponents' Testimony:

W.G. Gilbert III, self, stated that when Judge W.W. Leslie came to Dillon he said if a person could fill out a form and attach a map of their water rights, that was all that was required to be filed. If a person has a decreed right then all they have to do is attach a copy of the decree. Mr. Gilbert said he has had clients come to him in the last 10 years who have discovered water rights they did not know they had. He said the reasons vary why a person did not file, i.e., some people lost the papers; one man was in prison and did not file; and some people simply were not aware of what needed to be done. Mr. Gilbert stated that SB 310 was amended heavily in the Senate. He indicated that Jan Rehberg had some amendments which addressed the concerns many of the proponents had. Mr. Gilbert said that there were 2,000 people he was aware of who were adversely affected by the supreme court ruling. He said if this bill was not passed, approximately 190,000 acres of irrigated farm ground would dry up. Mr. Gilbert urged the committee to pass SB 310 with the Rehberg amendments.

Janice Rehberg, Teigen Land and Livestock, stated the bill as it reads today, provides that all of the late claims would be subordinated to all timely filed claims and to all compacts for federal reserve water rights. EXHIBITS 2, 3, 4, 5, 6, 7, 8, and 9 The subordination provision gives a windfall to the people who filed on time. Ms. Rehberg explained amendment 15, EXHIBIT 2. She said that the subordination language should be changed to read "if a timely filed claimant or a permit holder or a federal reserve right holder can come into court and show that they took action based upon a reliance on the late claim and that it might be abandoned and they have been damaged." Then the claim can be subordinated in order to protect the person who filed timely and took action if there was reliance on someone else who failed to file on time. Ms. Rehberg explained amendment 19, EXHIBIT 2, which would add a severability clause. The rest of the amendments in EXHIBIT 2 were offered to clean up the bill. She urged the committee to concur in SB 310 with the amendments.

Pete Wipf, Martinsdale Colony, presented written testimony.
EXHIBIT 10

Jess Nuttall, Pinesdale Water Department, presented written testimony. EXHIBIT 11

Gene Vuckovich, Anaconda and Deer Lodge County, stated that when ARCO and the Anaconda Company filed for water rights, they failed to file for the municipal water rights that were historically used in Anaconda and Deer Lodge County. Mr. Vuckovich stated that they have a late claim filed. He said that it is imperative to have some kind of water claim. These water claims that they have filed, have historically been used for municipal water for almost 100 years. Anaconda and Deer Lodge County supports SB 310 with the Rehberg amendments.

Lyle Richards, self, stated that he supports SB 310 with the exclusion of the subordination clause. He urged the committee to pass SB 310, with the Rehberg amendments.

Alan Shumate, self, stated that he supports SB 310 with the Rehberg amendments.

Jo Brunner, Montana Water Resource Association, stated that the Association supports SB 310 with the Rehberg amendments. She said that it has been a difficult decision for them because they have members on both sides on this issue.

Holly Franz, Montana Power Company, stated that Montana Power Company has a number of dams on Montana's rivers and they have substantial water rights which were filed on time. Montana Power Company supported the lawsuit because the adjudication was not established to take away peoples' water right; that was not the purpose of the law. Ms. Franz urged passage of SB 310 with the Rehberg amendments and not allow the water rights of many individuals to be forfeited, individuals who in fact were not abandoning the water rights.

Eugene Morelli, self, urged the committee to pass SB 310 with the Rehberg amendments. EXHIBIT 12 and 13

Dale Mahlum, self, stated he supports SB 310 without the subordination language. He urged the committee to pass SB 310 with the Rehberg amendments.

Marlene Chor, self, presented written testimony. EXHIBITS 14, 15, and 16.

Lorna Frank, Montana Farm Bureau, stated that the Bureau supports SB 310 with the Rehberg amendments. She said this decision was very difficult for them to make because they have members on both sides of the issue.

Lance Clark, Montana Realtors Association, stated the Association

would support SB 310 with the amendments.

Bruce Malcolm, self, stated that his ranch filed on several water rights but one water right was not filed. He said that his ranch will lose a water right to 40 acres of land. The difference in production value between dry land and irrigated land is \$600 an acre and the ranch will lose \$24,000 a year without this water right. He urged the committee to support SB 310 with the Rehberg amendments.

Pat McNamee, self, presented written testimony. EXHIBIT 17.

Cameron Mackenzie, self, stated that the DNRC had sent out a letter indicating that the water rights filings should be post-marked by April 30, 1982. Mr. Mackenzie said his ranch complied and when they went to sell a piece of land nine years later, there was no water right filed on this land. He stated that they had to renegotiate and he ended up losing \$40,000. He urged the committee to pass SB 310 as amended.

REP. BILL TASH, HD 73, Dillon, stated that he supports SB 310 with the Rehberg amendments.

Tom Peterson, self, stated that he supported the amendments presented by Ms. Rehberg to clean up the bill. He said that his main well which flows 700 gallons per minute and irrigates 70 acres will be put out of commission because the water rights were not filed on this well.

Mons Teigen, Teigen Land and Livestock Company, stated that he has called a number of people who had not filed their water rights as of April 30, 1982. He said he found on a 1989 list of late claimants (he held up an example for the committee to see) there were 3,200 water rights that were not filed and it could be as many as 6,000 late claimants. Mr. Teigen urged the committee to pass SB 310 as amended.

Jeff Walker, self, stated that he owns 160 acres in Montana. He discovered the previous land owner did not file for water rights on the springs and, according to Montana law, he does not have a right to irrigate from that spring. Mr. Walker urged the committee to pass SB 310 with the Rehberg amendments.

Echo Garberg, self, presented written testimony. EXHIBIT 18

Aileen Peterson, self, stated that she supports SB 310 with the Rehberg amendments.

Harold Shervin, self, stated that he and his family came to Boulder about 10 years ago and bought a ranch. He discovered that the previous owner did not file the water rights and said they stand to lose water that has been historically used since 1867.

Karen Barclay Fagg, representing Governor Marc Racicot, presented written testimony. EXHIBIT 19

Chris Tweeten, Chief Deputy Attorney General, Department of Justice, representing the Department of Justice, stated that a variety of the concerns and issues he will be addressing are those which have been identified and worked on by a number of attorneys in state government representing the Attorney General's Office, the Department of Natural Resources, the Governor's Office, and other agencies. He said that there are circumstances with respect to these late claimants which need to be addressed by the committee.

The effect of the supreme court decision: The supreme court heard an appeal from the water court stipulating that persons who failed to file their water right claim on or before April 30, 1982 had forfeited those rights. The Montana Supreme Court agreed with the water court determination and held that those rights were forfeited. The legal consequences are: for water rights that were not filed on or before April 30, 1982, as a matter of law, those rights cease to exist on that date. Legally speaking, those water rights when referred to by some of the other proponents as currently existing is not accurate--those rights were forfeited as of April 30, 1982; the rights do not exist. Many individuals who did not file their water rights in a timely fashion still use the water beneficially today.

How can we provide some relief to those late claimants? The Attorney General's Office researched that question and discovered that the legislature does have the power to grant remission of forfeitures. That means the legislature has the power to provide remedies for persons whose rights have been forfeited; provided that the remission of forfeiture can be done in a way that does not adversely impact intervening vested rights.

The amendments placed in SB 310 in the Senate were amendments prepared by the Department of Justice, the Department of Natural Resources, and the governor's office. They addressed a problem of how to design a remission of this forfeiture which will provide meaningful relief to the late claimants; while at the same time not impairing the vested rights or otherwise impair the interests that need to be protected from the State of Montana's perspective. When the remission language was designed, it was done in a way which protected the adjudication process; protected the negotiated water compacts; and provided protection for those intervening vested rights which occurred after April 30, 1982. This process was developed in favor of the persons who filed the claims on a timely basis.

The bill as introduced had serious implications for the water rights compacts which have been negotiated between the State of Montana and the Fort Peck and Northern Cheyenne Indian tribes. Mr. Tweeten stated that he served as chairman of the Reserve Water Rights Compact Commission and testified in the Senate

Judiciary hearing on SB 310. As originally introduced SB 310 had significant adverse impacts on those compacts. Mr. Tweeten said he thought the Senate amendments adequately addressed those impacts by requiring that late claimants be subordinated to the provisions of the negotiated compacts which were negotiated to provide protection for existing stated water rights.

What the state and tribes did in those compacts: The state and the respective tribes negotiated a settlement of the water right claims of the Fort Peck and Northern Cheyenne tribes. Those reserve water right claims would have been prior to a substantial majority of rights existing under state law on the reservations. As part of the settlement of those claims, agreements were negotiated with those tribes whereby they agreed to subordinate their tribal rights to the existing state water users. They would be junior to rights that are later in time than theirs. Mr. Tweeten said that it is important to make sure that those agreements are not upset by SB 310 and he thought the amendments that the Senate passed addressed those problems. With the Senate amendments, contained in the third reading copy of SB 310, the late claimants could not object to these compacts, and the late claimant would not be entitled to the benefit of those subordination agreements that the state and the tribes had negotiated.

The other issue which needs to be addressed is the jurisdictional status of the adjudication process. When SB 76 was passed in 1979, the specific intent of the legislature was that the adjudication process encompass federal reserve water rights as well as water rights existing under state law. In order to do this, they referred to a piece of federal legislation, the McCarran amendment, which waived the immunity of the United States from the general stream adjudications. Prior to the passage of the McCarran amendment, there was no way for a state court to get jurisdiction over federal reserve water rights. The way SB 310 was originally introduced, it had significant potential problems to upset that jurisdictional waiver of sovereign immunity. The Senate amendments, contained in the blue bill, address that problem. Mr. Tweeten asked the committee to not tamper with the Senate amendments, especially those dealing with the jurisdictional status of the adjudication.

Mr. Tweeten noted, as a point of interest, that the vast majority of claimants filed their claims in a timely fashion. Under the supreme court's decision, the timely filed claimants have rights that are superior to the rights of these late claimants. If the legislature puts the late claimants back in priority, it could open the door for litigation by those timely filed claimants claiming that their vested rights have been upset by SB 310 with the Rehberg amendments.

Opponents' Testimony:

REP. DON LARSON submitted written testimony on behalf of Larry

Fasbender. EXHIBIT 20

Arville Lammers, self, presented written testimony. EXHIBIT 21.

Questions From Committee Members and Responses:

REP. BACHINI asked Mr. Tweeten about the water still being used by late claimants and what will happen to the water. Mr. Tweeten stated that under the prior appropriation doctrine it becomes available for appropriation to other water users.

REP. BACHINI asked what if there were two different claims for the same water, junior water rights and senior water rights. Mr. Tweeten said if there are two or more claimants, as long as there is water, they are both able to use it. When water becomes short, then priority becomes an issue.

REP. BACHINI said he could not understand how a water right could be lost. If two people who had water rights, one dating back to the 1870's and the other to the 1900's, how could they lose their right? Mr. Tweeten replied that what they lose is the right to "serve" a priority date against another appropriator.

REP. BACHINI asked what would likely occur if this bill was not passed. Mr. Tweeten replied that, as he understands it, the adjudication will result in the issuance of a final decree on a stream listing, in order of priority, the water rights that have been decreed on that stream. Late claims will not be listed as existing water rights.

REP. BACHINI also asked if there was surface water in that stream, could the water be sold or leased. Mr. Tweeten replied that it would be available for appropriation by other water users including the late claimants who could come in and ask the DNRC for a permit to appropriate the water. If filed today, that permit would have a 1993 priority date.

REP. ROSE asked Ms. Rehberg about the windfall involved. "How do you think 206,000 filings are going to be a windfall?" Ms. Rehberg said that the windfall would go to a junior water right which would get an improved status. They would like to put people back into the proper priority. The windfall means that someone else would benefit if these people lose their water rights. The claimants who filed on time get more now than what they had in 1973.

REP. ROSE asked Ms. Rehberg if the people who legally filed by April 30, 1982 would really benefit from the windfall. Ms. Rehberg replied, "Yes, they would". She indicated many of her amendments do try to take into account the actual damages that may have occurred to claimants who filed timely.

REP. ANDERSON asked Mr. Tweeten if he had any idea how many claims were filed late by a week or were very close to the

deadline. Mr. Tweeten replied that the Department of Natural Resources may have that information.

REP. ANDERSON asked about possible implications if the committee was to allow claims that had been postmarked by the 5:00 p.m. deadline on April 30, 1982. What if the committee allows claims to come in over a six-month period after the April 30, 1982 deadline? Do you think that would jeopardize the compact agreements? Mr. Tweeten responded that a provision could be created to protect the compacts.

REP. ANDERSON asked if the provisions of the McCarran amendment would be jeopardized by allowing these late claims. Mr. Tweeten stated that it would probably be a claim the state could defend.

REP. ANDERSON asked what the ramifications would be if these late claimants are allowed to file legally. Mr. Tweeten replied there would be risks involved however, and they do not foresee all the arguments the federal government could make regarding the McCarran amendment. If you put in a date, like SB 310 does, by which all the claims would have to be filed and provide that any claim not be in that date would be extinguished, the McCarran amendment problem has been satisfied.

REP. ANDERSON asked if there is a possibility, by allowing people to open up these claims up and allow them to be filed, the federal government could participate in Montana's adjudication process. Mr. Tweeten stated that the federal government is participating in the adjudication of state water court now. The risks would be if a federal court would determine that Montana does not have a general stream adjudication which satisfies the McCarran amendment then the United States can pull its rights out of state court and have them adjudicated in the federal court.

REP. ANDERSON asked Ms. Rehberg how many of these late claimants filed within a short time after April 30, 1982. Ms. Rehberg said of the 3,500 filed late, 1,300 were filed by May 5, 1982. She said that only applies to the people who fell into the mailing issue, but it does not address the problem of attorneys not filing or losing the papers, or whose parents were ill, or the property was tied up in estates, or where property had been sold and the previous owner did not file.

REP. ANDERSON asked about possible ramifications if the committee was to extend the time to allow these late claimants to file and what time period would be necessary to address the problems discussed by the proponents today. Ms. Rehberg said that the original proposal in the first copy of the bill dealt with this issue on the adjudication process. If you want to get them all in you have go on the adjudication process itself. The Attorney General had some problems with this.

REP. SCHWINDEN asked Ted Doney, who specializes in water law, his opinion on the 200,000 acres of irrigated land and would the land

turn into a natural disaster situation. Mr. Doney said he had not had the opportunity to review the figures on the 200,000 acres, but if the number of acres is accurate, it certainly is a tragedy.

REP. ENDY asked Ms. Rehberg about the subordination language. Ms. Rehberg replied that amendment 15 says that the court can subordinate a late claim only if there was actual harm to a claimant filing timely. Those situations allow the court to subordinate, which means to take your water right and move it behind someone else's with regard to priority.

REP. ENDY asked if all of these water rights go back to the 1860's, why then in 1982 did these people have to file. Ms. Rehberg replied it was because the legislature told them to.

REP. STOVALL asked Ms. Barclay why she had a problem with the Rehberg amendments. Ms. Barclay replied that the concern is with amendment 15 talking about abandonment and not forfeiture. The courts have already said these rights have been forfeited. If the committee passes amendment 15, it would be giving the late claimants back their water rights. There is a penalty for not filing timely; that penalty is the loss of the priority date. According to western water law, when a right no longer exists everyone else moves up in time. All those junior people who filed timely, have already moved up in time. Under the third reading version of the bill, late claimants would be given back their rights, but not their priority. Ms. Barclay said that they are trying to be fair to the 98% of the individuals whose claims were filed timely.

REP. STOVALL asked Mr. Tweeten to explain amendment 19. Mr. Tweeten said he had not had a chance to review the amendment offered by Ms. Rehberg. He had, however, talked with her to narrow the severability clause down to make it focus on the provisions of the bill.

REP. LARSON asked how many late claims were they talking about. Don McIntyre, Department of Natural Resources, stated that the total number of claims filed was 206,000, and out of that amount, approximately 3,000 fell in the category of a late claim.

REP. LARSON asked if there was a possibility to classify late claims into two categories. One category as no fault by the claimants and the other category claiming negligence by late filing. Don McIntyre said that due to postmark filings a remedy could be fashioned. A late filing due to some reason other than postmark is a forfeiture.

REP. LARSON asked what happens when a person buys property in good faith and then later finds out there is no water right. Mr. Gilbert stated that in his law office they have a dozen late filed cases. There were various reasons why claims were not filed; buyers that were supposed to file did not; sellers that

were supposed to file and the buyers thought they filed and didn't; banks that did not file when they had the property in foreclosure; lawyers who lost papers and/or misunderstood instructions. If there are 3,000 late claims, it may be there are 9,000 lawsuits associated with them.

REP. BACHINI asked Ms. Rehberg if, when the supreme court came out with the decision that these people who filed late forfeited the water rights, the issue was addressed about filings that were not handled properly by DNRC, or lawyers, or were postmarked late? Ms. Rehberg said that those facts were not allowed in the proceeding. The testimony the committee heard today was not before the court. The court went strictly on the question of law.

REP. SPRING asked if, because these water rights were not filed in a timely fashioned, would thousands of acres be turned into a desert. Mr. Gilbert stated that because of the way the priority works, if he had an 1860 water right and did not file on April 30, 1982, he would lose that water right. He would get water only after every single person, who has a water right, gets water first. This issue depends on drought conditions and how much water is available in a given year.

REP. MASON asked about the people who filed their water rights on time but there were mistakes regarding the filing. What happens in these cases? Mr. McIntyre replied if the claim was filed on time, but as result of a stamping procedure it appeared the person filed late, then that person has the right to bring his case to court. The judge said he did have it filed but it was not stamped properly--that would not be considered a late claim.

REP. MASON asked Mr. McIntyre if a claim was filed on time and there were mistakes on the forms, would that not be considered a late filing. Mr. McIntyre replied that claims which were filed with the Department in a timely fashion but were not correct are still considered timely filed. He stated that the water court prepared and, through the Department of Natural Resources, sent out notices which said the postmark is the standard by which timely filing should be determined. However, a postmark may not be sufficient to determine if a claim was filed timely. This would be a question for the court to answer.

REP. STANFORD asked Mr. Tweeten if the purpose of the original legislation in the 1970's was to protect the water rights of Montana and its citizens. Mr. Tweeten replied that was the purpose of the adjudication process. Mr. Tweeten said there were several purposes of the adjudication. The constitution required that a system be set up to centralize records which existed on water rights in the state of Montana.

Closing by Sponsor:

SEN. REA thanked the committee and closed.

HOUSE AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

March 11, 1993

Page 11 of 11

ADJOURNMENT

Adjournment: 5:27 P.M.



VERN KELLER, Chairman



JAELENE RACICOT, Secretary

VK/jr

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL

DATE

3/11/93

NAME	PRESENT	ABSENT	EXCUSED
REPRESENTATIVE SHIELL ANDERSON	✓		
REPRESENTATIVE BOB BACHINI	✓		
REPRESENTATIVE JOE BARNETT V.C.	✓		
REPRESENTATIVE JODY BIRD	✓		
REPRESENTATIVE ERVIN DAVIS	✓		
REPRESENTATIVE BILL ENDY	✓		
REPRESENTATIVE HARRIET HAYNE	✓		
REPRESENTATIVE DON LARSON MIN. V.C.	✓		
REPRESENTATIVE GARY MASON	✓		
REPRESENTATIVE BILL REHBEIN	✓		
REPRESENTATIVE SAM ROSE	✓		
REPRESENTATIVE DORE SCHWINDEN	✓		
REPRESENTATIVE WILBUR SPRING	✓		
REPRESENTATIVE WAYNE STANFORD	✓		
REPRESENTATIVE JAY STOVALL	✓		
CHAIRMAN VERN KELLER	✓		

INFORMATION PROVIDED AT SENATOR REA'S REQUEST
February 22, 1993

Basic Assumption given by Senator Rea *D.O.R. figures*

- 184,000 acres of land which is currently valued and taxed as tillable irrigated land would now become valued as non-irrigated cropland ¹

VALUATION AND ESTIMATED TAX COMPARISON - SB168 - TAX YEAR 1994

<u>Land Type</u>	<u>Acres</u> ¹	<u>Ave. Ass'd Value/Acre 1st Yr. Phase-In</u> ²	<u>Total Est. Taxes</u> ³
<u>From:</u>			
Irrigated	184,000	\$263.72	\$543,100.00
<u>To:</u>			
Non-irrigated (summerfallow)	184,000	\$170.49	<u>\$351,100.00</u>
Difference			\$192,000.00

Additional Assumptions Made For This Comparison:

- ² The Average Assessed Value/Acre represents the average value of the average grade of irrigated land and non-irrigated land as taken from the new Agricultural Land Valuation Advisory Committee Recommendation schedules, and also reflects a 25% valuation phase-in.
- ³ The Total Estimated Tax is computed through applying the calculations shown below. As required in SB 168, these calculations assume the taxable percentage 3.86%. A statewide average mill levy of 289.953 mills is also assumed.

Acres x Average 1st Year Phase-In Assessed Value Per Acre x 3.86% x .289953

NOTE: The Total Estimated Taxes figures have been rounded to the nearest 100 dollars.

Jack Doe

PROPOSED AMENDMENTS TO SENATE BILL 310

1. Page 1, line 18 Title
Following: "of"
Insert: "the forfeiture of"
2. Page 1, line 19
Following: "water"
Strike: "forfeited"
3. Page 10
Following: line 15
Insert: "(11) "Late claim," for purposes of this part, means any claim forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

Renumber: subsequent subsections

4. Page 13
Following: line 14
Insert: "(10) "Late claim," for purposes of this part, means any claim forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

Renumber: subsequent subsections

5. Page 18, line 12
Following: "that"
Insert: "under 85-2-226 as interpreted by the Montana Supreme Court"

6. Page 20, lines 2 through 4
Strike: "any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995, 1996, must have the claim"
Insert: "all late claims must be"

7. Page 20, line 5
Strike: "prior"
Following: "proceedings"
Strike: "and does not, except as otherwise provided in 85-2-237, have the right to reopen decrees previously entered or to object to matters previously determined by the water court after objection;"
Insert: "which have taken place prior to the inclusion of the late claim in a decree issued by the water judge, and a person asserting a late claim may request that a decree previously entered be reopened or object to matters previously determined on the merits by the water court after objection only to the extent that the request or objection is otherwise authorized by law and is based on a claim of water right filed on or before April 30, 1982."

8. Page 20, line 8
Following: "objection"
Insert: "unless such person has also filed a claim or claims on or before April 30, 1982"
9. Page 20, line 9
Strike: "and"
10. Page 20, lines 10 and 11
Strike: "any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995, 1996,"
Insert: "a person asserting a late claim"
11. Page 20, line 15
Following: "act]"
Strike: "or"
Insert: "except to the extent that right or standing to object exists based on a claim of water right filed on or before April 30, 1982,"
12. Page 20, line 15
Following: "protection"
Insert: "for the right represented in the late claim"
13. Page 20, line 18
Strike: "and"
Insert: (c) If the water judge finds following objection by another claimant that a right represented in a late claim did not exist on July 1, 1973 or that the right represented in the late claim was the subject of a prior order or decree by the water judge, the water judge shall award costs and reasonable attorney fees to the person or persons filing the objection;"
14. Page 20, line 19 through line 20
Strike: Subsection (c) in its entirety
Insert: "(d) A person who has a late claim may be found liable for any costs and damages incurred by another person who proves by a preponderance of the evidence that such costs and damages were incurred as a result of actions undertaken in reasonable reliance upon a late claim and the conclusive presumption of abandonment provided in 85-2-226, provided:
(i) any claim for damages and costs filed under this subsection shall be filed in a court of general jurisdiction on or before July 1, 1998, and
(ii) the court of general jurisdiction in which any action is commenced under this subsection may, upon motion, certify the case to the water court for subordination of the right asserted in the late claim, if subordination will cure the alleged damage.

15. Page 21, lines 1 through 12

Strike: subsection (d) in its entirety

Insert: "(e) The water judge may subordinate any existing right asserted in a late claim to any claim filed on or before April 30, 1982, or any reserved water right compact negotiated or any permit issued pursuant to this chapter if and to the extent that

(i) an objection is filed under this part by a person entitled to subordination by July 1, 1998; and

(ii) the objector proves by a preponderance of the evidence that the objector has reasonably relied to his detriment upon the failure to file the existing right on or before April 30, 1982 and the conclusive presumption of abandonment provided in 85-2-226.

16.. Page 21, line 15

Following: "1996"

Insert: ", and shall notify any person who files a claim after July 1, 1996, that the claim will not be accepted"

17. Page 22, line 12

Following: "of"

Strike: "\$300"

Insert: "\$100, which shall be deposited in the water right adjudication account."

18. Page 22, line 12

Following: line 12

Insert: "(b) If an objection is filed to a late claim, the water judge shall assess an additional fee of \$200 against the person asserting the late claim, which fee shall be deposited in the water right adjudication account."

Renumber: subsequent subsections

19. Page 36, line 16

Following: "Section 10."

Strike: Remainder of Section 10 in its entirety

Insert: "Severability. It is the intent of the legislature that: (a) Except as provided in [subsection (b) of Section 10], if a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect, and if a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications;

(b) If any provision of this act is relied upon by a court of competent jurisdiction, in a final declaration after appeal, in declaring that the provisions of Title 85 do not create a general stream adjudication for which the United States has waived its immunity from suit under 43 U.S.C. § 666, or if any part of [85-2-221(3)(b) as enacted in section 3] is invalid, then all other parts are invalid."

✓1-2-110. All statutes subject to repeal. Any statute may be repealed at any time except when it is otherwise provided therein. Persons acting under any statute are deemed to have acted in contemplation of this power of repeal.

History: En. Sec. 294, Pol. C. 1895; re-en. Sec. 121, Rev. C. 1907; re-en. Sec. 95, R.C.M. 1921; Cal. Pol. C. Sec. 326; re-en. Sec. 95, R.C.M. 1935; R.C.M. 1947, 43-512.

✓85-2-313. Provisional permit. A permit issued prior to a final determination of existing rights is provisional and is subject to that final determination. The amount of the appropriation granted in a provisional permit shall be reduced or modified where necessary to protect and guarantee existing rights determined in the final decree. A person may not obtain any vested right to an appropriation obtained under a provisional permit by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action where the permit would have been denied or modified if the final decree had been available to the department.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(4).

Cross-References

Priority, 85-2-401.

BASIN STATUS

DATE 01/10
SB 310 October 9, 1992

BASIN #	BASIN NAME	WATER COST	HASTER/CLERK	DATE TEMPORARY ISSUED	DATE PRELIMINARY ISSUED	DATE FINAL ISSUED	OBJECTION DEADLINE	EXTENDED DEADLINE	OBJECTION LIST MAILED	DEADLINE NOTICE OF APPEARANCE	TOTAL CLAIMS	NONDECREED CLAIMS TO DATE	DECREED CLAIMS TO DATE
1 42I	Little Powder River	\$65			07-May-81	31-May-83					2061	0	2061
2 42J	Powder River	65			07-May-81	31-May-83					8241	0	8241
3 40P	Redwater River	35			06-Jan-84	22-May-85	09-Mar-84	23-Apr-84	21-May-84	26-Jul-84	1928	0	1928
4 38H	Belle Fourche R a/ Chey R	20			02-Nov-83	27-Mar-84	03-Feb-84				210	0	210
5 39H	Little Mo b/ Little Beav.	20			02-Nov-83	27-Mar-84	03-Feb-84				203	0	203
6 42L	O'Fallon Creek	55			07-Feb-84	17-Apr-85	10-May-84	25-Jun-84	25-Jul-84	28-Aug-84	2750	0	2750 15393
7 41H	Willow Creek	25	KL/LB		06-Jul-84		09-Oct-84		31-Oct-84	05-Dec-84	1483	0	1483
8 40D	Big Dry Creek	55	KL/JL		28-Sep-84		04-Jan-85		14-Feb-85	29-Mar-85	2968	0	2968
9 39G	Beaver Creek	20	KL/JL		31-Jan-85		10-May-85		19-Jun-85	22-Jul-85	705	0	705
10 43QJ	Yell R from Brid to CFYel	20	HC/LB		23-Jul-85		21-Oct-85	03-Feb-86	21-Mar-86	21-Apr-86	1075	0	1075
11 40H	Rock Creek	30	/LB		13-Aug-85		18-Nov-85		27-Feb-86	31-Mar-86	1513	0	1513
12 42K	Yell R b/t Tongue & Powder	30	KL/LB		19-Sep-85		18-Dec-85	18-Mar-86	02-May-86	02-Jun-86	1469	0	1469 9213
13 40G	Sage Creek	20	KL/LB			20-Dec-83	23-Mar-84	13-Apr-84	02-May-84	07-Jun-84	937	0	937
14 76N	Lower Clark Fork	25	KL/LB	28-Feb-84			04-Jun-84	03-Aug-84	30-Aug-84	05-Oct-84	1203	0	1203
15 76C	Fisher River	20	KL/LB	28-Feb-84			04-Jun-84	03-Aug-84	30-Aug-84	05-Oct-84	234	0	234
16 76D	Kootenai River	25	KL/LB	22-Mar-84			26-Jun-84	10-Aug-84	30-Aug-84	05-Oct-84	1405	0	1405
17 76B	Yask River	20	KL/LB	22-Mar-84			26-Jun-84	10-Aug-84	30-Aug-84	05-Oct-84	94	0	94
18 76GJ	Flint Creek	20	KL/LB	29-Mar-84			03-Jul-84	03-Sep-84	21-Nov-84	31-Dec-84	1035	0	1035
19 76E	Rock Creek	20	KL/LB	29-Mar-84			03-Jul-84	20-Aug-84	18-Oct-84	23-Nov-84	712	0	712
20 41U	Dearborn River	20	KL/JF	10-May-84			09-Aug-84	24-Aug-84	27-Sep-84	02-Nov-84	872	0	872
21 41S	Judith River	90	KL/JF	17-May-84			21-Aug-84	04-Oct-84	13-Nov-84	19-Dec-84	5225	0	5225
22 41F	Madison River	55	KL/JF	25-Jul-84			29-Oct-84	29-Nov-84	14-Feb-85	29-Mar-85	2801	10	2791
23 76K	Swan River	20	KL/LB	09-Aug-84			13-Nov-84		28-Dec-84	01-Feb-85	563	0	563
24 76I	Middle Fork Flathead Riv	20	PR/LB	09-Aug-84			13-Nov-84		28-Dec-84	01-Feb-85	196	17	179
25 76J	South Fork Flathead River	20	PR/LB	09-Aug-84			13-Nov-84		28-Dec-84	01-Feb-85	124	0	124
26 76H	Middle Clark Fork River	50	KL/JF	29-Nov-84			05-Mar-85	03-Jun-85	03-Oct-85	07-Nov-85	2548	0	2548
27 43BV	Sweet Grass Creek	20	KL/JF	19-Dec-84			26-Mar-85	10-May-85	15-Jul-85	14-Aug-85	722	0	722
28 43B	Yellowst above & Bridger	80	KL/JS	16-Jan-85			23-Apr-85	22-Jul-85	03-Mar-86	04-Apr-86	4856	30	4826
29 40L	Frenchman Creek	20	KL/JF	16-Jan-85			23-Apr-85		12-Jul-85	16-Jul-85	417	0	417
30 39FJ	Little Beaver Creek	20	KL/JF	31-Jan-85			10-May-85		19-Jun-85	22-Jul-85	982	0	982
31 39F	Little Mo above Little Be	50	KL/JF	01-Feb-85			10-May-85		14-Aug-85	13-Sep-85	2969	0	2969
32 39E	Box Elder Creek	45	KL/JF	01-Feb-85			10-May-85		01-Aug-85	03-Sep-85	2455	0	2455
33 40E	Ho R. betwee Mussel & FPD	50	HC/LB	07-Mar-85			07-Jun-85	08-Jul-85	16-Oct-85	22-Nov-85	2991	0	2991
34 43BJ	Boulder River trib of Yel	20	KL/LB	03-Apr-85			03-Jul-85	03-Sep-85	06-Nov-85	11-Dec-85	823	0	823
35 40A	Musselshell River	100	ED/JS	07-May-85			06-Jul-85	01-Nov-85	08-Apr-86	05-May-86	5731	0	5731
36 41K	Sun River	50	PR/LB	14-May-85			13-Aug-85	13-Jan-86	11-Nov-88	15-Dec-88	2936	0	2936
37 76G	Clark Fork above Blackft	80	BL/JF	17-May-85			15-Aug-85	17-Dec-85	23-Mar-88	22-Apr-88	4849	0	4849
38 41E	Boulder River trib of Jef	25	HC/JF	20-Jun-85			17-Sep-85	17-Dec-85	30-Sep-87	30-Oct-87	1232	0	1232
39 43C	Stillwater River	35	KL/JS	07-Nov-85			05-Feb-86	06-May-86	13-Jun-86	14-Jul-86	1730	0	1730
40 41H	Gallatin River	105	PR/HC	26-Dec-85			26-Dec-85	24-Jun-86	06-Aug-87	08-Sep-87	5726	11	5715
41 43A	Shields River	125	PR/JS	03-Aug-88			01-Nov-88	30-Jan-89	06-Nov-89	07-Dec-89	3382	0	3382
42 41G	Jefferson River	135	HC/JF	17-Oct-89			16-Apr-90	16-Jul-90	16-Apr-91	17-May-91	2455	67	2383
43 40K	Whitewater Creek	160	HC/LB	21-Nov-89			21-May-90	20-Aug-90	19-Dec-90	18-Jan-91	3968	378	3590
44 40C	Lower Musselshell River	185	ED/JS	06-Feb-90			06-Aug-90	05-Dec-90	17-Oct-91	18-Nov-91	3830	2	3828
45 41C	Ruby River	130	BL/LB	14-Nov-90			14-May-91	12-Aug-91			2170	18	2152
46 41D	W. End Salmon Bitterroot R	135	BL/LB	16-Sep-92			15-Mar-93				1281	12	1278 72662
SUBTOTAL											98060	536	97524

158

BASIN STATUS

October 9, 1992

BASIN #	BASIN NAME	WATER MASTER/ COST	DATE TEMPORARY ISSUED	DATE PRELIMINARY ISSUED	DATE FINAL ISSUED	OBJECTION DEADLINE	EXTENDED DEADLINE	OBJECTION LIST MAILED	DEADLINE NOTICE OF APPEARANCE	TOTAL CLAIMS	TOTAL UNEXAMINED CLAIMS	EXAMINED CLAIMS TO DATE
47 43D	Clarks Fork Yellowstone R	0 Unknown								2588	0	2588 100X
48 41I	Missouri R. a/b Holter	0 Unknown								5179	121	5058 98X
49 40O	Milk River b/l Beaver Cr.	0 Unknown								3406	154	3252 95X
50 40J	Milk R. b/t Fresno & Wvtr	0 Unknown								12783	1224	11559 90X
51 40F	Milk River above Fresno	0 Unknown								2320	571	1749 75X
52 43Q	Yell. R b/t CF Yel & BH R	0 Unknown								2425	709	1716 71X
53 41D	Big Hole River	0 Unknown								3798	2260	1538 40X
54 76H	Bitterroot River	0 Unknown								7833	4820	3013 38X
55 40B	Flatwillow Creek	0 Unknown								3633	2884	749 21X
56 40M	Beaver Creek trib of Milk	0 Unknown								2948	2440	499 17X
57 41B	Beaverhead River	0 Unknown								2106	1747	359 17X
SUBTOTAL										49019	16939	32080
58 76F	Blackfoot River	0 Unknown								3665	3665	0
59 76LJ	Flathead R. incl Flat. Lk	0 Unknown								5123	5123	0
60 76L	Flathead b/l Flathead L.	0 Unknown								3013	3013	0
61 41L	Cut Bank River	0 Unknown								658	658	0
62 41M	Two Medicine River	0 Unknown								1105	1105	0
63 41O	Teton River	0 Unknown								2335	2335	0
64 41P	Marias River	0 Unknown								3678	3678	0
65 41Q	Mo. R. from Sun to Marias	0 Unknown								4049	4049	0
66 41R	Arrow Creek	0 Unknown								2179	2179	0
67 41T	Mo. R. from Mar. inc Bul.	0 Unknown								3060	3060	0
68 40EJ	Mo. R. b/t Bullw. & Mussl	0 Unknown								2524	2524	0
69 41QJ	Mo. R. from Holter to Sun	0 Unknown								2522	2522	0
70 40H	Big Sandy Creek	0 Unknown								817	817	0
71 40I	Peoples Creek	0 Unknown								678	678	0
72 41A	Red Rock River	0 Unknown								2742	2742	0
73 40Q	Poplar River	0 Unknown								2069	2069	0
74 40R	Big Muddy Creek	0 Unknown								2015	2015	0
75 40S	Missouri R. b/l Ft. Peck	0 Unknown								2955	2955	0
76 40T	St. Mary River	0 Unknown								180	180	0
77 41J	Smith River	0 Unknown								2670	2670	0
78 43E	Pryor Creek	0 Unknown								625	625	0
79 43N	Shoshone River	0 Unknown								163	163	0
80 43O	Little Big Horn River	0 Unknown								1193	1193	0
81 43P	Big Horn b/l Greybull R	0 Unknown								2143	2143	0
82 42A	Rosebud Creek	0 Unknown								1200	1200	0
83 42B	Tongue R. inc Hanging Wmn	0 Unknown								1335	1335	0
84 42C	Tongue R. b/l Hanging Wmn	0 Unknown								4684	4684	0
85 42KJ	Yell. R. b/t BH & Tongue	0 Unknown								4719	4719	0
86 42H	Yell. R. b/l Powder River	0 Unknown								5265	5265	0
SUBTOTAL										69364	69364	0
TOTAL										216443	86839	129604

Late Claims filed and recorded as of April 30, 1992 = 3285

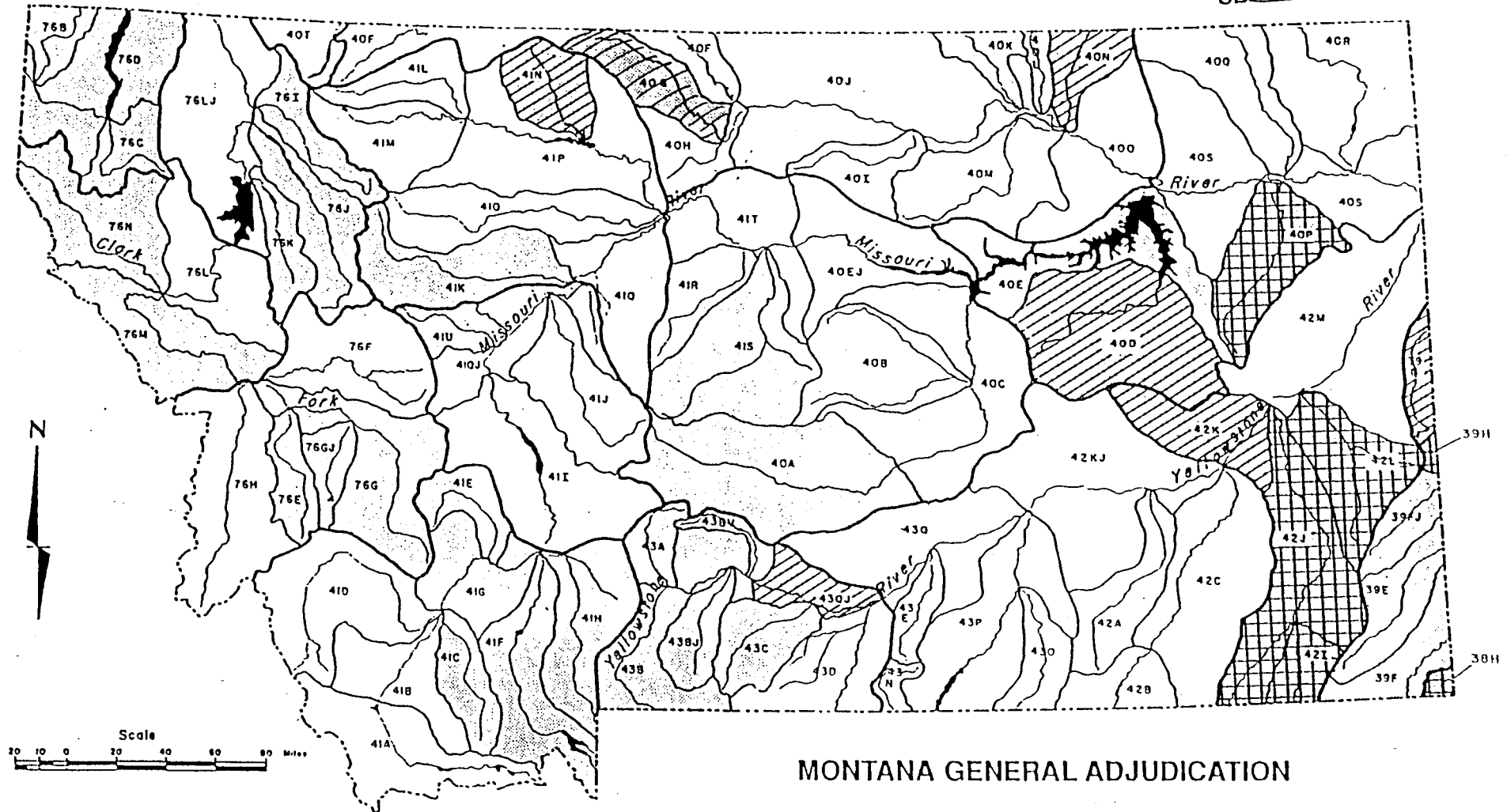
Water Masters
 Kathryn Lambert Patti Rowland
 Ed Dobson Mike Cusick
 Doug Ritter

Clerk of Court
 Lori M. Burnham

Deputy Clerks
 Janet Fulcher
 Judy Salvas
 Melody Colwill

NOTE: Highlighted areas are areas which have been changed or added.

EXHIBIT _____
DATE 3/11/93
SB 310



MONTANA GENERAL ADJUDICATION

STATUS AS OF JANUARY, 1991

-  Temporary Preliminary Decree (33 basins)
 Preliminary Decree (6 basins)
 Final Decree (6 basins)

EXHIBIT 6
DATE MAR 31 1993
SB 310

THE LAW FIRM

MOORE, O'CONNELL & REFLING

A PROFESSIONAL CORPORATION

PERRY J. MOORE
BARRY G. O'CONNELL
MARK D. REFLING
WM. RUSSELL McELYEA
CINDY E. YOUNKIN
WILLIAM M. BROOKE

SUITE 10 LIFE OF MONTANA BUILDING
601 HAGGERTY LANE

Reply To
POST OFFICE BOX 1288
BOZEMAN, MONTANA 59771-1288
TELEPHONE: (406) 587-5511
FAX: (406) 587-9079

March 10, 1993

Jan Rehberg
Capital One Plaza Center
208 North Montana, Suite 204
Helena, MT 59601

Re: Our File No. 66029-1993

Dear Jan:

The Moore Family has been ranching in the Musselshell Valley since the 1870s. My grandfather appropriated water from a tributary of the Musselshell in the year 1878. That water right has been the second oldest right in the entire Musselshell River Basin. The earliest water right was held by the Settle Family.

The Settle Ranch was purchased by the Martinsdale Colony. For some reason the Martinsdale Colony failed to file a claim for the earliest water right in the entire river basin.

Under our present Montana law, the Martinsdale Colony has lost that most valuable water right. That loss accrues to the benefit of the Moore Family, who now have the oldest water right in the Musselshell Basin. My son and other members of my family reap the apparent benefit of this situation.

Despite the fact that the current law appears to be beneficial to us, I feel that the law should be changed in the manner set forth in Senate Bill 310 in its original form. The penalty for failure to file a claim on time seems to me to be much too harsh. It is my hope that the Legislature will enact Senate Bill 310 into law in its original form, or in a form reflecting the amendments you have shared with me, even though the result will be to downgrade the position of the Moore Family water rights.

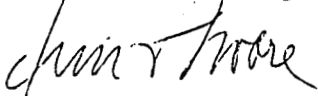
As an attorney who has an extensive water law practice, I am well aware of the concerns expressed about the affect the enactment of Senate Bill 310 will have upon the adjudication process. It is my opinion that the

Jan Rehberg
March 10, 1993
Page 2

enactment of the Bill into law will not fatally compromise the constitutionality of the process. It will unquestionably impose some additional burdens upon other claimants. In my view, the imposition of those burdens is acceptable - when it results in the protection of a constitutional property right that will otherwise be lost because of a failure to meet an arbitrary deadline for filing a claim.

Please feel free to tender copies of this letter to members of the Legislature if you choose to do so.

With warmest regards,

A handwritten signature in cursive script, appearing to read "Perry J. Moore".

PERRY J. MOORE

PJM:ket
6602993.L1F

March 10, 1993

1993 Montana Legislature
House Agriculture Committee
State Capitol
Helena, MT 59620

Dear Legislative Committee,

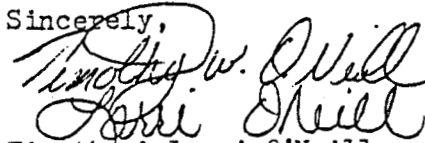
We are writing in regards to SB 310.

Attached please find a copy of the letter which was sent to the Senate Judiciary Committee explaining the circumstances of our water loss.

We would urge you to pass SB 310 but we feel the subordination clause in the bill is overwrought. We encourage you to accept the ammendments which are presented by the proponents.

Your support is vital for the water users of this state.

Sincerely,



Timothy & Lorri O'Neill
126 Cottonwood Lane
Arlee, MT 59821

February 13, 1993

Senator
State Capitol
Helena, MT 59620

Dear Senator

This letter is in regards to SB 310. I am writing to urge you to vote for this bill.

We recently bought our small farm in April of 1989 at which time the DNRC confirmed the water rights and said they were filed fine by the previous owner and could never be taken away. Now I am informed that I have no water due to the May 6, 1992 Montana Supreme Court ruling on appeal 91-140.

The DNRC should have informed me before my purchase in 1989 that the paperwork was filed 3 days late and that I could lose the rights.

The water rights were established as Secreterial water rights issued by the Federal Government and filed in Missoula County on February 11, 1908 to Henry and Marguerite Matt. This piece of land has been transferred to various owners and has been used every year since as irrigation and stock water. We as small farmers need your support and help to stay in business.

This is both unfair to the people and unconstitutional. We encourage you to put the people of the state first and help the water users by voting to support SB 310.

Sincerely,

Timothy O'Neill
126 Cottonwood Ln
Arlee, MT 59821

DATE 3/11/93
SB 310

**LATE CLAIM INDEX
INDEX BY OWNER**

WATER RIGHT ID	USE	FLOW RATE
1	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
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12	12	12
13	13	13
14	14	14
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16	16	16
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92	92	92
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95	95	95
96	96	96
97	97	97
98	98	98
99	99	99
100	100	100

POINT OF DIVERSION
SEC SEC TWP RGE

TRIB SOURCE NAME

WATER RIGHT ID USE

DATE	RATE	RECVD	YEAR
12-1-78	100	100	1978
12-1-79	100	100	1979
12-1-80	100	100	1980
12-1-81	100	100	1981
12-1-82	100	100	1982
12-1-83	100	100	1983
12-1-84	100	100	1984
12-1-85	100	100	1985
12-1-86	100	100	1986
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12-1-11	100	100	2011
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12-1-13	100	100	2013
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12-1-15	100	100	2015
12-1-16	100	100	2016
12-1-17	100	100	2017
12-1-18	100	100	2018
12-1-19	100	100	2019
12-1-20	100	100	2020
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12-1-22	100	100	2022
12-1-23	100	100	2023
12-1-24	100	100	2024
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12-1-58	100	100	2058
12-1-59	100	100	2059
12-1-60	100	100	2060
12-1-61	100	100	2061
12-1-62			

SEC SEC YMP RGE CM TRIB

SOURCE NAME

OWNER NAME

76M	-W-211569-00	IR
76M	-W-211570-00	DM
42M	-W-154282-00	ST
42M	-W-154282-00	ST
76M	-W-211759-00	IR
76M	-W-211760-00	ST
40A	-W-210424-00	ST
40A	-W-210425-00	ST
41G	-W-212596-00	IR
43Q	-W-201134-00	DM
43A	-W-212621-00	ST
43A	-W-212622-00	ST
43A	-W-212623-00	ST
43A	-W-212623-00	ST
41G	-W-212596-00	IR
43A	-W-212621-00	ST
43A	-W-212622-00	ST
43A	-W-212623-00	ST
43A	-W-212635-00	ST
76G	-W-211477-00	IR
76F	-W-185985-00	HM
76F	-W-185986-00	HM
42C	-W-145395-00	ST
42C	-W-145396-00	ST
42C	-W-145397-00	ST
42C	-W-145398-00	ST
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42C	-W-145400-00	ST
42C	-W-145401-00	ST
42C	-W-145402-00	ST
42C	-W-145403-00	ST
42C	-W-145404-00	ST
42C	-W-145405-00	ST
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42C	-W-145401-00	ST
42C	-W-145402-00	ST
42C	-W-145403-00	ST
42C	-W-145404-00	ST
42C	-W-145405-00	ST
42C	-W-145510-00	ST
76H	-W-211026-00	IR
76H	-W-211027-00	ST
41H	-W-211757-00	IR
41H	-W-211758-00	DM
41H	-W-211759-00	IR

40.69	G	851108	1801	SENE14	15N	22W	MS	SIXMILE CREEK
7.41	G	851108	1805	SENE14	15N	22W	MS	SIXMILE CREEK
20.00	G	820503	1960	HESESE28	13N	52E	PI	WELL
20.00	G	820503	1960	HESESE28	13N	52E	PI	WELL
.75	C	860709	1920	MWSENM34	02N	19W	RA	UT CAMERON CREEK
		860709	1920	MWSENM34	02N	19W	RA	UT CAMERON CREEK
		820503	1951	MWSENM10	07N	15E	WH	UT LEBO CREEK
		820503	1950	MWSENM10	07N	15E	WH	UT LEBO CREEK
918.00	G	860912	1947	SW13	01S	05W	HA	UT JEFFERSON RIVER
20.00	G	820503	0000	14	01N	26E	YE	WELL
		861003	1902	SESENM33	02N	09E	PA	UT SHIELDS RIVER
		861003	1902	MWSENM33	02N	09E	PA	UT SHIELDS RIVER
		861003	1902	33	02N	09E	PA	SHIELDS RIVER
		861006	1902	NEWM327	02N	09E	PA	COTTONWOOD CREEK
918.00	G	860912	1947	SW13	01S	05W	HA	UT JEFFERSON RIVER
		861003	1902	SESENM33	02N	09E	PA	UT SHIELDS RIVER
		861003	1902	MWSENM33	02N	09E	PA	UT SHIELDS RIVER
		861003	1902	33	02N	09E	PA	SHIELDS RIVER
		861006	1902	NEWM327	02N	09E	PA	COTTONWOOD CREEK
11.06	G	850830	1803	NEWM319	08N	08W	PW	JEFFERSON CREEK
350.00	G	830126	1865	EZNE11	12N	09W	PW	WASHINGTON CREEK
350.00	G	830126	1865	N2NESE	7	12N	08W	PW
		820507	1916	NEENM34	01S	49E	PR	UT SPRING CREEK
		820507	1916	NEENM34	01S	49E	PR	UT SPRING CREEK
		820507	1916	SEENM34	01S	49E	PR	UT SPRING CREEK
.15	G	820507	1917	SMWM34	01S	49E	PR	UT SPRING CREEK
		820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
		820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
		820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
		820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
.03	G	820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
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		820507	1916	NEENM34	01S	49E	PR	UT SPRING CREEK
.15	G	820507	1917	SMWM34	01S	49E	PR	UT SPRING CREEK
		820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
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.03	G	820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
		820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
		820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
		820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
		820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
.03	G	820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
		820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
		820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
		820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
		820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
.03	G	820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
		820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
		820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
		820507	1920	SEENM34	01S	49E	PR	UT SPRING CREEK
		820507						

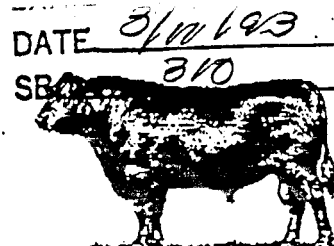
ABBOTT	HARILYN	A
ABBOTT	HARILYN	A
ABY	EUGENE	S
ABY	JARALEE	
ACUTUS	INDUSTRIES INC	
ACUTUS	INDUSTRIES INC	
ADAMEC	LOUISE	
ADAMEC	LOUISE	
ADAMS	JOE	A
ADAMS	JOYCE	N
ADAMS	KENNETH	E
ADAMS	KENNETH	E
ADAMS	KENNETH	E
ADAMS	KENNETH	E
ADAMS	MARIANNE	M
ADAMS	SHIRLEY	L
ADAMS	SHIRLEY	L
ADAMS	SHIRLEY	L
ADAMS	SHIRLEY	L
AG-PRODUCTS CO		
AGARD	LISA	D
AGARD	LISA	D
AIERN	RALEIGH	I
AIERN	RALEIGH	I
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ALEXANDER	ELEANOR	L
ALEXANDER, JR	ELEANOR	L
ALEXANDER, JR	ARCHIBALD	S



LESNIK ANGUS

John and Patti Lesnik
Fishtail, Montana 59028

(406) 328-6995



Representative Vern Keller
State Capitol
Helena, Montana 59620

March 11, 1993

Dear Vern,

Weather and calving prevent me from being at today's SB 310 hearing.

The bill as changed by the Senate accomplishes only one thing; it keeps the affected acres on the tax rolls. A right junior to all others, especially the in-stream flow reservations, is essentially no right at all.

It has been known since June 3, 1982 that there was a problem with claims being filed late.

Why were various agencies allowed to enter into agreements with the federal government prior to completion of the adjudication process? The process is not completed until all aspects of the adjudication are finalized, including settlement of the late filings.

Why have I not been given a hearing concerning my objections to the Water Court's determination that my claims were filed late?

Why were my objections to other claims handled and resolved as if my claims were timely filed?

Why have I been led to believe by the Water Courts personnel and by actions that my claims would be accepted as timely filed? ie, The review of my original filed claims with the Billings Field Office resulted in agreement as to acreage and flow rates and the creation of additional claims to better define place of use, for which I was charged additional filing fees.

The Water Courts expected perfection from water right holders and have shown no intention to correct deficiencies in the filing process. They, themselves, have been far less than perfect in their handling of the adjudication process. Individuals acting as judge and jury are not serving the citizens of Montana.

The Yellowstone Basin has not been issued a final decree. Recognizing my rights will not jeopardize the process of adjudication.

Failure of the late filed claims to be recognized on the basis of their historical claim date will adversely affect every citizen of Montana. Without irrigation most ranches will cease to be viable operations. Their loss will affect the economy. The sale of ranches with concerns based on the scenic rather than agricultural value will undoubtedly result in loss of access to Montanans.

Please do what is right for Montana. Please don't act to cover for interests who covet our water, our land, our rights.

John Lesnik

Mrs. Chairman and Members of the Committee

My Name is Pete Wipf, Sec. of the Martinsdale Colony, which is approx. 2 1/2 west of Haddon. We lost 18 water claims, 6 of which are for ir. 12 were for Stock watering. These 18 claims are part of our historical rights. We lost our rights due to human error on part of the DNR Water rights specialist or technician. I realize this is a bold statement to make, but let me explain what happened.

Mike Klemmensen, who was the Sec. Treas. of Martinsdale Co until he became Sec. Treas. of Sp Water Colony. which is the Colony that split off of Martinsdale Colony. in 1981. Since Mike Klemmensen had been handling those water rights for both Martinsdale & Sp Water Co for many years, he filed for the water rights. on Mar. 8, 1982.

All of these claims involved affidavits were notarized by the DNR water rights specialist from the Laramie office, Craig Dubois on March 10.

In working with these claims Mike Klemmensen and everybody involved we made the impression that everything was filed claimed or finished time.

However when we checked on the temporary preliminary decree we realized that these ir. & Stock claims were not filed, according to the water court, even tho we all thought they were all done on Mar. 8.

We strongly support the passage of SB 310 ^{without subcommittee} so we can reestablish our rights to the water we have used for the past 35 years. We bought the land with these water rights ~~and~~ and never intended not to file a claim for those water rights.

Without passage of SB 310 we have lost our our legal right to the water which we have used for 35 years. Due to human error, never from our intent. We know there are many others who lost water rights the same way, not intending to ~~lose~~ them.

Thank You.

MEMORANDUM

TO: File

FROM: Craig Dubois, Water Rights Specialist
Lewistown Water Rights Field Office

DATE: December 13, 1989

SUBJECT: Martinsdale Colony late claims

Because I have had to research this problem several times in the past 4 years or more, and it appears that more discussion will be held in the future, I have decided to jot down recollections and research findings.

Two irrigation claims, 40A-W000089 and 40A-W000990, were filed on February 29, 1980, by Martinsdale Colony at the request of the Federal Land Bank because a loan was involved. Both claims were formerly decreed rights.

Mike Kleinsasser of Martinsdale Colony was in our office on the 8th of March, 1982, and worked with Sharon Gregory, technician, on completing claims. I notarized claims for them. Apparently a number of these claims involved use rights which they were going to support with affidavits or filed rights which they were going to obtain copies of. Our records indicate that 1 irrigation claim and 19 stock claims were received by our office on March 23rd, 1982, along with the maximum filing fee of \$480 paid by check #2832 and signed by Mike M. Kleinsasser. All of these 20 claims involved affidavits which were signed and notarized on March 10, 1982.

On April 20, 1982, we received irrigation claim 40A-W197900 which had been notarized by me on March 8, 1982. On June 3rd, 1985, 5 irrigation claims were received (211300-211304). These late claims had been notarized on March 8, 1982, by me. I believe these claims came in as a result of the Colony checking the Temporary Preliminary Decree and realizing that they had overlooked these 5 claims. Twelve late stock claims (211311-211322) were received and notarized on June 11, 1985.

	No. DATE	Rec'd DATE	Type	Aff
00989	2-29-1980 M C	2-2-1980	IRR	
000990	2-29-1980 M C	2-2-1980	IRR	
15777	3-8-1982 LWC	3-23-1982	IRR	3-10-19
145778	3-8-1982	3-23-1982	ST	3-10-19
145779	3-8-1982	3-23-1982	ST	3-10-19
145780	3-8-1982	3-23-1982	ST	3-10-19
145781	3-8-1982	3-23-1982	ST	3-10-19
145782	3-8-1982	3-23-1982	ST	3-10-19
145783	3-8-1982	3-23-1982	ST	3-10-198
145784	3-8-1982	3-23-1982	ST	3-10-198
145785	3-8-1982	3-23-1982	ST	3-10-198
145786	3-8-1982	3-23-1982	ST	3-10-198
145787	3-8-1982	3-23-1982	ST	3-10-1982
145788	3-8-1982	3-23-1982	ST	3-10-1982
145789	3-8-1982	3-23-1982	ST	3-10-1982
145790	3-8-1982	3-23-1982	ST	3-10-1982
145791	3-8-1982	3-23-1982	ST	3-10-1982
145792	3-8-1982	3-23-1982	ST	3-10-1982
145793	3-8-1982	3-23-1982	ST	3-10-1982
145794	3-8-1982	3-23-1982	ST	3-10-1982
145795	3-8-1982	3-23-1982	ST	3-10-1982
145796	3-8-1982	3-23-1982	ST	3-10-1982
77900	3-8-1982 LWC	4-20-1982	IRR	
11300	3-8-1982 M C	6-3-1985	IRR	
11301	3-8-1982 M C	6-3-1985	IRR	
11302	3-8-1982 M C	6-3-1985	IRR	
11303	3-8-1982 M C	6-3-1985	IRR	
11304	3-8-1982 M C	6-3-1985	IRR	

	NOT. DATE	Rec'd DATE	Type
211311	6-11-1985	6-11-1985	ST En.
211312	6-11-1985	6-11-1985	ST Sp.
211313	6-11-1985	6-11-1985	ST Wall
111314	6-11-1985	6-11-1985	ST Ro.
111315	6-11-1985	6-11-1985	ST Sp.
111316	6-11-1985	6-11-1985	ST Sp.
111317	6-11-1985	6-11-1985	ST Sp.
111318	6-11-1985	6-11-1985	ST Ex.
211319	6-11-1985	6-11-1985	ST Fr.
111320	6-11-1985	6-11-1985	ST Ro.
111321	6-11-1985	6-11-1985	ST Sp.
111322	6-11-1985	6-11-1985	ST Sp.

EXHIBIT 11
DATE 3/11/93
SB 310

PINESDALE WATER DEPT.
JESS NUTTALL
WATER RESOURCE MANAGER
P.O. BOX 73
PINESDALE, MONT. 59841
406-961-3700

March 11, 1993

SENATE BILL 310: Effect on Pinesdale Water right claims;
S76H W 151721 Sheafman
S76H W 151722 Cow (Cowin)

Mr. Chairman

The town of Pinesdale in Ravalli County has a population of over 700 people that will be seriously injured if our irrigation claims are lost.

We bought property in 1986 for over \$200,000 with portions of 1st and 2nd rights on Sheafman and Cowin Creeks for the sole purpose of helping to meet our municipal water needs and E P A demands -- only to find out that our predecessor filed the claims two days before the deadline, with the attempt to be on time and the department stamped them late.

Our decreed rights and claims and the decreed rights and claims of all the other people are not abandoned.

We realize the state has a problem but, the bottom line and bare fact is that the STATE IS STEALING WATER FROM THE PEOPLE. And those who have taken advantage of the so called "ABANDONED" water rights are only parties to the crime.

The late filing date is only an excuse for their lack of responsibility to serve the people, which was the very purpose of the DNRC in the first place.

I have been in the water business for over five years and I would not have known about this late claim of our own except for the adjudication process. This is when all of the people come out of the woodwork with a one to one communication.

People have their businesses, farms and ranches to attend to not WATER LAW!

The loss of these claims will bring serious injury and detriment to the irrigation, municipal and E P A demands upon our community, as well as many other communities, farmers and ranchers. And if.. we haven't forgotten, they are the ones that keep the state running, not the DNRC, STATE OR FEDS.

The very purpose and responsibility of this body, elected by the PEOPLE, is to SERVE THE PEOPLE and their interests FIRST. Not the state or Federal Government. Our Attorney General also knows this.

We therefore appeal to this legislative body to do everything within its power to delete the subordination language from this bill, that we may have a remedy of fairness for the people, that know they have legitimate or even decreed water rights.

Think and remember the PEOPLE first... PLEASE!!

Consider claims by their merit

Eugene Morelli Missoula Co. EXHIBIT 13
DATE 3/11/93 ~~have a historic~~
water right that has been used on my land for
100 years that's in jeopardy because of a late filing.

We all understand the importance of water in MT. Except for the people of this state, it may be the most important resource we have. I think we also understand the importance of the adjudication process to help protect this resource.

Allowing late claims to be heard & judged according to their merit, in no way jeopardizes the adjudication process. In fact the only way the state can truly evaluate the water use in this state, is to examine every claim, and judge it according to the facts.

For the state to take away legal, historic water rights, or make them subordinate to all others, is incredibly severe punishment for missing a filing deadline! The punishment is permanent it's devastating and grossly unjust!

I attended the Senate hearing on this bill

and couldn't understand why ~~that state of MT~~ ^{EXHIBIT 13} ~~DATE 3/11/93~~ ^{SB 310} would want to do this to its own citizens. I do understand the concerns of the Attorney General's office, but I believe they can be addressed without destroying the intent of this very important bill.

At the Senate hearing one of the concerns expressed was losing jurisdiction from the Federal Government. But we were also told that one of the conditions to receive that jurisdiction in the first place was that all of the water users must be represented in the adjudication process.

Please don't try to meet that condition by pretending that we don't exist or won't be severely impacted by the consequences.

Late claimants are only asking to be heard by the water courts with fairness, and that all claims be judged on their valid and historic use.

I ask you to please remove the subordinating amendment from this bill. And help restore fairness to the adjudication process by supporting SB

TELETYPE
3710

Please help restore fairness to the adjudication
process. Support Senate Bill 310 with
the amendments proposed today.

Mr. Chairman & members of the committee
My name is Marlene Ebn and I am the
owner of a ranch in Garfield Co. The ranch has
been in my family since 1912 and the
water right ~~was~~ that was passed on with the
ranch has a priority date of 1879. When
all the water rights were to be filed I had
a lawyer handle mine - he went through
and did all the necessary work to make sure
it would be done right. 11 years later I
found out that it was not done right - he
had forgotten to file one claim with the others.
The late claim was filed by the lawyer
3 years after the deadline but I had
no knowledge that it was filed late
or that it had never even been filed.

I never knew I had given up my water
right and I never gave up my water

right - someone else did it for me.

Now I ask you - please do not do it again.

My right to the water has not changed, it still appears in the Master Book, it still has a priority date of 1879 and the water still flows through on my land. The only thing that changed was that a copy of the original right never got where it was going until 5 years later.

I do not want to be subordinate to anyone else's claims - my neighbor already takes most of the water and we have been to court trying to persuade him to see the error of his ways. A ranch isn't much of a ranch without adequate water and

I think that's a pretty high price
to pay for a paper mistake.

Regardless of what other agencies
and interests claim think of the people
who by no fault of their own got
caught up in this mess - None of us
who testified before or now have
given up our water rights --

~~Human~~ Human error did it for us.

Please remember the old saying.
Right is Right. Once before we

~~that you~~

relied upon someone else to help us
comply with the law and now we
are relying on you to correct the
mistakes that were inadvertently made.
Thank you

EXHIBIT 17
DATE 3/11/93
SB 310

To: Montana Legislature Agriculture Committee
From: Pat McNamee
RE: Deletion of subordination language in Senate Bill 310
Date: March 11, 1993

My name is Pat McNamee from Helena. I'm here to request that you delete the subordination language from Senate Bill 310.

On my way back from Butte last week I saw a large billboard that said "Cattle Free by 93". I sincerely hope that is not your goal. But if you take away our water rights, you will be one step closer to that goal. Please delete the subordination language.

Don't let yourselves be known as the "Cattle Free Agriculture Committee".

Sincerely,

Pat McNamee

Pat McNamee

To members of the House Agriculture Committee: DATE 3/11/93
SB 310
Repealing SB 310

I am Echo Harberg of Whitetail and I would like to explain the situation my son Brian and I find ourselves facing because of the Court's decision regarding "late filed" water rights claims.

We live in the northeastern part of Montana and through our ranch meadows flow the Whitetail, Beaver and Muddy Creeks, all in the drainage area of the lower Missouri River.

Our family filed claims for quite a few water rights with the Department of Natural Resources and Conservation. Most of these claims are for stock water use (dams, springs, wells) and some are for irrigation purposes. They were all timely filed - before April 30, 1982, except three. These three are all for flood irrigation covering many acres, and they were included in nearly thirty claims that my mother (who owned the land at that time) filed. I prepared the applications for the claims that my husband and I filed, and offered to do the same for my mother, but she declined my offer, preferring to have them done by a local law firm. When she checked some time later with the water rights office at Glasgow, she discovered that the most important claims - for flood irrigation - had not been filed. She was then assisted by one of the employees of the Glasgow office who helped her prepare the claims - but this was in November, 1982 - after the designated re-filing date of April 30, 1982.

My mother died in 1987, and we became owners of the land, and of the water rights. Wanting to change the method of irrigation on the Whitetail Creek to a system using the diversion ditch and dikes, we checked with the Glasgow office and were told to go ahead, nothing more needed to be done unless we changed the point of diversion, which we did not do.

On February 16, 1988 we started working with our ASCS and SCS offices to get the necessary technical assistance, and also applied for cost share on the project through a five year long term agreement. Our application was approved, and the Department of Fish, Wildlife and Parks gave their approval for the extra work that

has to be done on the stream bank for the diversion ditch.

Although the project is not yet complete, it has cost thousands of dollars, part of which we received as cash share from the government, and which I presume will have to be repaid of our rights are forfeited. The records date of the appropriation for that time claim are from 1900 to 1907. Although not regularly claimed by my family, there were times from well over the early 1900's by my grandfather and other members of my family for land bringing my holdings during the early opening run-off.

Because a re-siting deadline date chosen by the Legislature was somewhat minimal, those rights which were legally appropriated and paid nearly 20 years ago must now be considered forfeited, and we stand to lose forever the use of this very important water. It seems to me that perpetuation of these rights and the loss of the use of all developments pertaining to them is an entirely harsh penalty for inadvertently incurring a losing decision - especially when the claims were paid, and the losing paid were paid - while does prove that the rights were not intended to be abandoned.

I can see the need to harmonizing of all water rights before a basin can be adjudicated (which may be many years from now), because anyone with an opening, well & other water now own not agree to be back upon in earlier years, and this gave everyone a chance to give claims on them. But it seems to me that the claims that had already been legally paid should have the same status as a patent as does for that same land. We had hoped that Senate Bill 310 would protect these original rights, but in its present form our rights would be the same as if we filed for new rights - which would be giving to all their first before our new claim. Because of our location on the very upper ends of these creeks, we would have to be able to take water early enough to make use of the high run-off. If something cannot be done to allow us to retain these original legal appropriations, the records will be donating to my family members opportunities far into the future.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

GLASGOW WATER RESOURCES REGIONAL OFFICE

EXHIBIT 18
DATE 3/11/93
SB. 310

839 1ST AVENUE SOUTH
BOX 1269

MARC RACICOT, GOVERNOR



STATE OF MONTANA

(406) 228-2561

GLASGOW, MONTANA 59230

TO: Echo Garberg
FROM: *Pat Riley* Pat Riley, Water Resources Specialist III, Glasgow
Regional Office
DATE: February 16, 1992

As you requested I have written down what I can remember of the meeting I had with Mildred Bantz in approximately Nov of 1982.

I have been an employee of the Department of Natural Resources and Conservation since August 24, 1981. I have worked in the Glasgow Regional Office in the Water Rights Adjudication Program since I was hired in 1981. One of my duties after the claims filing deadline of April 30, 1982 was to go around to the different county seats and assisted claimants who had either turned in incomplete claims or had to add information to their claims. At one of these meetings I met Mrs. Bantz in Plentywood. I cannot remember why we met but I do remember meeting Mrs. Bantz and assisting her in filing 3 late filed Irrigation claims.

From the discussions I had with Mrs. Bantz I can remember how upset and confused she was about her irrigation claims not being filed. Apparently she had gathered together all of her old water right filings from the county courthouse and taken them to a law firm. She had filed 26 Stock and Domestic claims and had somehow not filed her 3 Irrigation claims. What was even more disturbing was that several of the claims that were filed on time were for groundwater sources that were exempted from the filing process and did not have to be filed.

I do remember that I looked over the aerial photos Mrs. Bantz used to file her claims with and there were a lot of acres of water spreading irrigation that she filed the late claims on and you could easily see the value of them to her Ranch.

In closing, I would like to state that my recollections are somewhat clouded after 10 years but I do remember meeting with Mrs. Bantz and also her dismay over finding out her total hay base for her Ranch might be in jeopardy

TESTIMONY ON SENATE BILL NO. 310

My name is Karen Barclay Fagg. I appear on behalf of the Administration to support Senate Bill No. 310 as it is now written. Senate Bill No. 310 was amended in the Senate to provide a mechanism whereby water right claims that were not timely filed could be brought back to life and become a part of the state's on-going general adjudication. This bill, as amended, is a best effort to provide relief to those who did not file timely claims and still not have an adverse impact on the adjudication process or on those who did file timely claims.

As you are aware, the executive branch of state government is involved in the state water adjudication in many diverse roles. One role is that of a claimant of water rights. The State has some claims that fall into the category of "late claims", that is, claims that were submitted after April 30, 1982. If this bill is passed the Department of State Lands intends on filing claims that have previously not been filed. If this bill is not passed state agencies, such as the Department of State Lands, will review their legal avenues to determine how best to assert their claims in the on-going adjudication.

Although, as I indicated previously, Senate Bill No. 310 was amended with input from the executive branch, it is necessary that I present testimony to you to make you aware of the potential consequences of the legislation should it pass.

Senate Bill No. 310 deals with an unfortunate circumstance in which holders of existing water rights did not file statements of claims to their water rights as required by law. As originally written, the Legislature required that all claims be filed by April 30, 1983. By order of the Montana Supreme Court, on petition by the Attorney General, the date was shortened to April 30, 1982, giving claimants three years in which to file their claims. Following three years of notice and over 250 workshops conducted by the State, the result of the claims filing process was that approximately 206,000 water right claims were filed. Approximately 2% of all the claims filed are so-called late claims. Only about 1/2% of all the claims filed involve irrigated agriculture, i.e., irrigated lands in excess of 40 acres.

The policy question facing this Legislature is whether the risk in reopening the door to litigation challenging the adequacy of the adjudication by passing Senate Bill No. 310 is off-set by the protection attempted to be offered to the affected water users who hold less than 2% of the claims filed in the adjudication.

Senate Bill No. 310 is attempting to address the forfeiture of water rights that occurred as a result of water users failing to file statements of claims in the on-going adjudication. The testimony of the proponents and the bill itself is understandably

couched in terms of abandonment. The argument being that these affected water users are still using their water and have never really abandoned their water rights. Unfortunately, we are not dealing with the issue of whether the affected water rights are or have been abandoned. In 1992 the Montana Supreme Court declared, as a matter of law, that § 85-2-226 is not an abandonment statute, it is a forfeiture statute. The Montana Supreme Court held that "[a]ll claimants were treated equally, provided equal notice, and given equal opportunity to file by the given deadline." It further stated that water rights were forfeited as a result of owner negligence and not as a result of excessive and unreasonable state action. The forfeiture statute was held to be a proper exercise of the police power of the state, satisfying all of the guidelines necessary to enact a forfeiture statute and complying with all aspects of due process as required by the Montana Constitution and the Constitution of the United States.

As a result of Montana Supreme Court cases, including the one holding that water rights are forfeited by failing to make a timely filed claim, the State is reasonably certain that it has an adjudication that it can defend as a comprehensive adjudication with a final and binding effect on all water rights in Montana.

Let me briefly quote to you from the Montana Supreme Court concerning the importance of the claims filing to an adjudication process. "Before water rights can be adjudicated state wide, it is essential that existing rights first be firmly established. Section 85-2-226, MCA, is a reasonable means of compelling comprehensive participation, extinguishing duplicative and exaggerated rights, and ridding local records of stale, unused water claims. These are all necessary to meet the objective of adjudicating Montana's water."

Because the law we deal with in this bill involves a forfeiture statute and because the time for the forfeiture has passed, complex legal issues result in any attempt to address the forfeiture. The Attorney General has discussed these issues previously.

The Administration's central concerns with this bill are that it not jeopardize the jurisdictional status of the Montana adjudication under the McCarran Amendment; that it not adversely affect any negotiated Compact, or Compacts under negotiation; that it not result in any governmental taking of any water right of a formerly junior water right holder to the forfeited water right within the scope of the Fifth Amendment or Article II, § 29 of the Montana Constitution; that it not result in an increase in the cost of the adjudication by requiring extensive reopening and re-noticing of existing and temporary decrees, extensive re-examination of claims, or extensive re-noticing of the opportunity to file or refile claims; that the due process and equal protection rights of the timely filed claims not be put at

risk; that it not establish a precedent whereby water rights, including instream flow rights, can be created by the legislature and interjected into the chain of priorities in a manner inconsistent with the prior appropriation doctrine; and, that those who have participated in a timely fashion not incur further excessive legal expense to have late claims reviewed for their impact on the timely filed water right claims.

In closing, I will point out to the Committee that Montana has spent over \$18 million in providing for an adjudication that federal law allowed us to conduct in the Montana court system, i.e., a McCarran Amendment adjudication. The federal courts, including the United States Supreme Court, have warned Montana, that they will look on our adjudication process with exacting scrutiny. Consequently, any amendments we make to the adjudication must be made only after exacting scrutiny. We all sympathize with those whose water rights have been forfeited, but in our efforts to find them relief, we must not put at risk the 98% of the timely filed claims.

Finally, it is possible that regardless of whether Senate Bill No. 310 is passed the State of Montana may be sued. If the Bill is not passed indications are that some of the proponents will bring federal lawsuits. If the Bill is passed indications are that the federal government may bring action in federal court over the McCarran Amendment issue, and private parties, such as timely filed claimants and permit holders, may bring actions alleging the taking of property.

LARRY FASBENDER
ONE NORTH LAST CHANCE GULCH
P.O. BOX 367
HELENA, MONTANA 59624
(406) 442-2120
Fax (406) 449-2729

Larry
handled out
did not
testify

TESTIMONY ON SENATE BILL 310

My name is Larry Fasbender. I am a farmer with irrigated lands north of Fort Shaw, Montana on the Greenfields Irrigation Project. The water rights that affect my operation were timely filed.

SB-310 deals with a very unfortunate situation in which holders of existing water rights did not file statements of claims to their water rights as required by law. But the law allowed sufficient time for every water user to file a claim. There was approximately 3 years of notice, including notice in our tax bills, and over 250 workshops conducted by the State. In that 3 years over 98% of the claims were filed. Now this legislature is being asked to let late claims back into the adjudication process....., but at who's expense?

I sat through the entire Senate hearing and listened to the testimony. The Attorney General's representative and the spokesperson for the Governor explained the potential risks and costs to the state. Basically, the State made the following points:

1) The certainty of having an adequate adjudication is diminished by any new legislation affecting the adjudication because it may jeopardize the jurisdictional status of the Montana adjudication under the McCarran Amendment;

2) there may be adverse affects to any negotiated Compact of Compacts under negotiation;

3) that there could be governmental taking of a water right within the scope of the Fifth Amendment of Article II, Section 29 of the Montana Constitution;

4) that it may result in an increase in the cost of the adjudication by requiring extensive reopening and re-noticing of existing and temporary decrees, extensive re-examination of claims, or extensive re-noticing of the opportunity to file or refile claims;

5) that it may establish a precedent whereby water rights, including instream flow rights, can be created by the legislature and interjected into the chain of priorities in a manner inconsistent with the prior appropriation doctrine;

6) that the due process and equal protection rights of the timely filed claims could be put at risk; and,

7) that those who have participated in a timely fashion will incur further excessive legal expense to have late claims reviewed for their impact on the timely filed water right claims.

Although SB-310 was amended in the Senate to address many of those concerns, the fact remains that if the late claims are allowed back into the adjudication, my legal rights and those of all timely claimants are compromised. I will be forced to defend against the objections of late claimants who want to diminish my claims in an effort to improve the late claimants position in the chain of priorities, even in the situation where the late claimant is subordinated to my timely filed rights. We, the timely filed claimants, are the ones who will bear the cost associated with such a defense....not the State of Montana.

As the law now stands, timely filed claimants have a legal right to defend our claims against the extinguished claims of untimely filed claimants. We bear little cost, if any, in protecting our rights against untimely filed claims. However, if SB-310 is passed, our costs will necessarily increase because a legal right we currently have has been stripped from us. Although a legislative subordination, as proposed in the Senate Amendments, is more acceptable than simply opening the door to late claims, the timely filed claimants are the ones who have to pick up the expense of adding these tardy claimants to the adjudication.

In closing, I too sympathize with those who have found their water rights forfeited through neglect, ignorance, or reliance on others services, but I am unwilling to sacrifice my good and timely filed water rights so that potential malpractice claims against lawyers can be dismissed. It is unfortunate that some claims were not timely filed, but please do not make the situation worse by transferring the cost to the timely filed claimants. Put the cost on those who caused the problem, the ones who failed to follow the law.

EXHIBIT 21
DATE 3/11/93
SB. 310

03/11/93

Mt. House Ag. Comm.
Rep. Vernon Keller Chairman

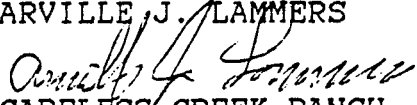
Dear Rep. Keller,

My concern today is SB 310 and I would like to urge you to vote against the issue. In the event that SB 310 becomes law and late fillers are allowed into the adjudication process even with a 1973 date there will be court challenges and added financial burden placed on those people who filled there claims within the current law. If Montana's adjudication process is opened to allow late fillers in I fear other claimants will make court challenges to be allowed in also.

The adjudication process on our stream [musselshell River] is in the late stages of objections to fillings. We have to this point spent thousands of Dollars and have not reached the preliminary decree stage. I do not think that it is right nor fair that I be asked to spend additional dollars because some failed to meet the deadline of current law. A deadline ,I might add, that was extended one year then three months after that deadline already.

Please do not add financial burden or risk to our water rights process. Vote no on SB 310.

ARVILLE J. LAMMERS


CARELESS CREEK RANCH
SHAWMUT, MT. 59078

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Agriculture

COMMITTEE

BILL NO. SB 310

DATE 3-11-93 SPONSOR(S) SENATOR REA

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Delia Adams</i>	<i>Self</i>	<i>with amendments</i>	<i>✓</i>
<i>Lyle Richards</i>	<i>Self</i>	<i>✓</i>	<i>✓</i>
<i>Bruce Malcolm</i>	<i>Self</i>	<i>with amendments</i>	<i>✓</i>
<i>Barbara Wilberding</i>	<i>Self</i>	<i>with amendment</i>	<i>✓</i>
<i>AMERON MACKENZIE</i>	<i>SELF</i>		
<i>ECHO GARBERG</i>	<i>SELF</i>	<i>with amendment</i>	<i>✓</i>
<i>RAYMOND GARBERG</i>	<i>SELF</i>	<i>with amendment</i>	<i>✓</i>
<i>Robert J. Leland</i>	<i>SELF</i>	<i>with amendments</i>	<i>✓</i>
<i>Elson Mac Lachlan</i>	<i>SELF</i>	<i>with amendments</i>	<i>✓</i>
<i>Bill Wilberding</i>	<i>Self</i>	<i>with amendments</i>	<i>✓</i>
<i>Eugene Morrell</i>	<i>Self</i>	<i>with amendments</i>	<i>✓</i>
<i>James E. Bazzell</i>	<i>Self</i>	<i>✓</i>	
<i>DALE MAHLUM</i>	<i>Self</i>	<i>✓</i>	
<i>Wesley T. ...</i>	<i>Tecogen L + LSC</i>	<i>✓</i>	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Agriculture

COMMITTEE

BILL NO. SB 310

DATE 3-11-93

SPONSOR(S) SEN. RSA

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Louise R Knowlton - Shepherd Mt	Self	☒ w/Amend	
THOMAS D. PETERSON ^{WISCONSIN} MT	Self	☒ w/Amend	
Pete Wipf	Mariondale Colony	☒ w/Amend	
Don Nuttall ^{PO Box 75} Pinesdale MT	Pinesdale MT	☒	
W G G. Burt ^{III} Box 345 Dillon	Self	☒	
Bob Hoffman A.P.A.	A.P.A. Ch. Pres. Assoc.	☒	
Holly Franz	Montana Power Co.	☒	
Heidi Nuttall	Pinesdale, MT	☒	
Sam Clark	MT Assn Restlers	☒	
Marion Johns	Self	☒ without sub. language	
William D. Davis	Self	☒ without sub. language	
Bill Cornelius	Self	☒	
Shirley Cornelius	Self	☒	
Chanelle Sherwin	Self	☒ without sub. language	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Agriculture COMMITTEE BILL NO. SB 310
DATE 3-11-93 SPONSOR(S) SEN. REA

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Harold Sherwin	Self	without ✓ Sub.	
Chris Tweeten	Dept of Justice	✓	
Kan Fagg	Gov Racicot		
Aileen Peterson	Self	with amendment	
Polly Walker	Alon	with amendment 310	
FAT McNamee	SECK	with amendment	
Ann Leigen	"	with amendment	
Angie Lammens	"		X
Richard Moe	"		X
Jeff Walker	"	with amendment	
Lynn Frank	Mt. Farm Bureau	X	
Larry Deabender	Self		X
Melvin Loh	Self	X	
GENE Vuckovich	Associated Dairy Producers	X	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Agriculture COMMITTEE BILL NO. SB 310
DATE 3-11-93 SPONSOR(S) SEN. REA

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jance L. H. Wey	Teigen Ranch Livestock	X H. Wey	
D. Brunner	Mudra	310 H. Wey	
John E. W. Wey	Martindale Cattle	✓	
C. Liff Cox	Winters Ranch	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By CHAIRMAN VERN KELLER, on March 25, 1993, at
3:00 P.M.

ROLL CALL

Members Present:

Rep. Vern Keller, Chairman (R)
Rep. Joe Barnett, Vice Chairman (R)
Rep. Shiell Anderson (R)
Rep. Bob Bachini (D)
Rep. Jody Bird (D)
Rep. Ervin Davis (D)
Rep. Bill Endy (D)
Rep. Harriet Hayne (R)
Rep. Don Larson (D)
Rep. Gary Mason (R)
Rep. Bill Rehbein (R)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Wayne Stanford (D)
Rep. Jay Stovall (R)

Members Excused: Rep. Spring

Members Absent: None

Staff Present: Bob Person, Legislative Council
Jaelene Racicot, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: None
Executive Action: SB 310

EXECUTIVE ACTION ON SB 310

Motion: REP. BACHINI MOVED SB 310 BE CONCURRED IN for the
purpose of discussion.

Discussion: REP. BACHINI asked Bob Person to explain the
amendments presented by Jan Rehberg. EXHIBITS 1B, 1C, 1D, 1E &
1F.

Bob Person said that EXHIBIT 1A was a series of options that the committee could consider. Mr. Person requested Ms. Rehberg to explain to the committee the content of her amendments. Mr. Person said that basically the general purpose of the Rehberg amendments was to allow late claims to be inserted to their original priority.

REP. BACHINI asked if the Rehberg amendments would include late claims other than the postmark date claims and those late claims that were not properly handled by the Department of Natural Resources. Mr. Person said that the Rehberg amendments allow for a broader interpretation of late claims than those just mentioned by REP. BACHINI.

Mr. Person said that there was not a clear definition what was determined mishandled and perhaps the committee would like to explore the possibility of an amendment containing a definition.

REP. BACHINI asked if the committee amended the bill to include postmark claims and late claims mishandled by the Department of Natural Resources, then how could the committee determine those that were improperly handled. Don McIntyre, Department of Natural Resources, explained a range of mishandled claims.

Mr. Person explained that when a letter is mailed, the post mark may not be readable or not accurate. It is not always possible to determine when the letter was sent or mailed on time. At the deadline time, there is a variation of factors leading to the claims that were filed late.

REP. BIRD asked how many claims would be affected by the post mark issue. REP. LARSON said approximately 1,200.

Mark Simonich, Director of the Department of Natural Resources, said that they had people in the Department of Natural Resources physically counted the late claims that had arrived at the department. They found claims that were received by April 30, or claims that were received about a week after the thirtieth of April but the postmark was illegible, or claims that had been notarized on or before April 30 and were received during the end of April but did not have an envelope or the postmark was illegible. There were just under 1,200 late claims that fit the description. There are a total of 3,200 late claims that have been received as of today.

REP. ROSE asked Mr. Simonich if the department stamped the mail the day it arrived at the Department of Natural Resources. Mr. Simonich said that to the best of his knowledge, the mail was stamped when it first reached the department.

REP. BACHINI asked Mr. Simonich that if the committee was to adopt an amendment to address the 1,200 postmark late claims,

what effect would that amendment have on the lawsuits that are pending. Mr. Simonich said that he was not certain which lawsuits were pending. Don McIntyre, Department of Natural Resources, stated that it depended on which type of lawsuit REP. BACHINI was talking about--there are many types of lawsuits pending and the reasons for these lawsuits vary.

REP. BIRD asked how many of the 1,200 late claims (if an amendment was drafted to address the issue) would affect someone else's water rights. Mr. Simonich said that he did not know.

REP. STOVALL asked W.G. Gilbert about what happens to an existing water right if someone else files on that same water right. Mr. Gilbert said that the only way there could be two filings on the same water right, is if there was a direct contest as to who owned that water right because of some factor in the past. Otherwise, you cannot file on someone else's water right.

REP. LARSON asked if Harley Harris, Department of Justice, could explain the legal problem if the committee allowed a certain class of late filers back in the adjudication process. Mr. Harris said at this point in time the question is difficult to conclusively state an opinion on. The primary potential problem that could arise, would fall into the area of equal protection of the law. It would depend if the legislature would have a rational basis for making a distinction between postmark claims and the others. He said that the Department of Justice was fairly confident the rationale of the postmark distinction probably would pass muster.

REP. LARSON asked Mr. Harris to explain the risks Montana would assume if it reopens the adjudication process to the 2% late claim filers. Mr. Harris said as the Department of Justice sees it, the risks fall into two general areas with some serious downsides. The first area involves the McCarran amendment. Montana has fought for a period of time to maintain jurisdiction over water rights asserted by the United States and the Indian Tribes of the state of Montana in order to be able to adjudicate and determine those rights in state court rather than federal court. This action would most likely create a challenge by the federal government as to the validity of Montana's adjudication. The second area of concern is what happens to the rights that may have been acquired by those individuals who did file claims on time.

REP. ANDERSON asked about the concerns Mr. Harris might have with the two areas he had just mentioned. Mr. Harris said that he has had discussions with two attorneys from the United States Department of Justice. They indicated that in order to put late claimants back in with original priority would be seen by the United States as a violation of the McCarran Amendment. Therefore, the attorney's course of action would be to challenge this violation.

REP. ANDERSON asked if the attorneys for the United States Department of Justice decided there was a violation and to take action, would there be a substantial cost incurred. Mr. Harris said that federal water rights are viewed with such sensitivity by the Federal Government, that the government would view the cost of getting involved a deterrent.

REP. ANDERSON asked Harley Harris if he had anything other than speculation of violating the McCarran Amendment for allowing these late filers back into the adjudication process. Mr. Harris said that he could not give the committee factual evidence to predict any future litigation. The general consensus is that there would be a significantly heightened degree of risk that the state would lose control over its water rights.

REP. ANDERSON asked Karen Fagg, Governor's Office, if she had anything to comment about the McCarran Amendment and the language in the Rehberg Amendment regarding the compact agreements. Ms. Fagg stated that Mr. Harris did an excellent job presenting their concerns regarding the McCarran Amendment. The risks to Montana are substantial to open up the adjudication process, that means anyone who has claims near federal or Tribal rights would have to go to federal court. She said that they agree with the Northern Cheyenne Tribe. The tribe sent a letter stating that they did not think it was right to break promises to the Cheyenne Tribe before the ink was dry on the Compact. EXHIBIT 1H

REP. ANDERSON asked Karen Fagg if there was some language in the amendments to allow for subordination on future compacts as well as present compacts to alleviate the fears the tribes may have. Ms. Fagg stated that concern was amended in the Senate. It subordinates these late claims to existing and future compacts.

REP. LARSON asked Ms. Rehberg how she sees the amendments that she proposed will affect the tribal negotiations. Ms. Rehberg said that they are willing to waive their sovereign immunity if all the rights are going to be adjudicated in one process; that is the rationale behind the McCarran amendment. She said that amending the adjudication process does not jeopardize the McCarran amendment; if she is wrong that is why the severability clause was written in the bill--the act falls if there are any problems.

REP. BACHINI asked if a postmarked date is recognized as being legal under any circumstances. Harley Harris stated that under a general rule postmarking is deemed as sufficient as of that date.

REP. BACHINI asked if these late postmark claimants would be considered privileged. Mr. Harris said that a particular Montana Supreme Court case left open a challenge on a factual basis for people who had posted on time. However, Judge Leslie did rule that claims had to be actually filed by April 30, 1982. Chris Tweeten, Department of Justice, added that there is not a universal rule about whether something is considered to be in the

custody of the clerk at the time it is mailed. An example is if you are filing a complaint by mail with the clerk and you send it to the clerk by mail, it's postmarked before the date, but the clerk received it after the date, then that claim is barred by the statute of limitations. He added that there are certain situations when filing a brief. If you place your brief in the U.S. mail on the due date then it is considered timely filed. Different courts have different rules with respect to that question.

REP. BACHINI asked what were the instructions by the Department of Natural Resources when these notices were sent out and did these notices say that the filed claims had to be physically delivered by April 30, 1982. Mark Simonich, Department of Natural Resources, stated that the department distributed various instructional brochures dealing with the filing of water rights. Those instructional brochures differed. The court orders specifying dates for filing differed as well. Mr. Simonich referred to EXHIBITS 2, 3, 4, 5, 6, and 7.

REP. DAVIS asked Mr. Harris to give the committee some direction as to how they should deal with the problems. Mr. Harris stated that there are basically three options that the committee can consider and all of these options contain risks. Mr. Harris stated that his main concern was to not violate the McCarran Amendment.

REP. KELLER suggested that if the committee cannot come to a decision today, then he would suggest that SB 310 be sent to a subcommittee.

REP. ENDY asked to have some history on why the legislature wanted all water rights to be filed by April 30, 1982. Don McIntyre, Department of Natural Resources, stated in 1972 the constitution changed in Montana and because of this it directed that the Department of Natural Resources have a centralized system of record keeping and to create a comprehensive system of allocating water. As part of the whole system, the Department of Natural Resources instituted both the permit system for requiring water rights, for changing water rights, and it created a system for determining what were the existing rights in the state of Montana. Mr. McIntyre said that the propose of this system was not to take a water right from any person. What happens when you get into adjudication or when you invite the federal government-- you can only invite them through the McCarran Amendment, is to have a claims registration program. Montana adopted a system to have people file by a certain date. This is the issue that is now before the committee. As a result of this system, there is now litigation before the courts of Montana.

REP. SCHWINDEN stated that the committee could amend SB 310 and then it would go back to the Senate and they can establish a conference committee to assess what kind of risks should be taken.

Motion: REP. SCHWINDEN moved to adopt the amendment to protect the integrity of ratified compacts. EXHIBIT 1I

Discussion:

REP. BACHINI stated that he agreed with REP. SCHWINDEN.

Motion/Vote: TO ADOPT THE AMENDMENTS CONTAINED IN EXHIBIT 1I.

Vote: A roll call vote was called. The motion carried unanimously. REP. BIRD AND REP. SPRING voted by proxy.

Motion: REP. ANDERSON moved to adopt the Rehberg Amendments. EXHIBITS 1B, 1C, 1D, 1E, & 1F.

Discussion: REP. STOVALL agreed with REP. ANDERSON'S motion.

REP. LARSON said that he visited with the three members of the Senate subcommittee that studied the bill. They said if this bill comes back with the Rehberg amendments on it, they will kill the bill.

REP. ROSE said that if he bought land with water rights and it turned out the land did not have water rights, the land would be classified as dry land.

REP. REHBEIN stated that with the Rehberg amendments amended into the bill, it would make the bill complicated and therefore they would request that it be sent to a conference committee.

Motion/Vote: TO ADOPT THE REHBERG AMENDMENTS IN EXHIBITS 1B, 1C, 1D, 1E, & 1F.

Vote: A roll call vote was called. The motion carried.

Motion: REP. BACHINI MOVED SB 310 TO BE CONCURRED IN AS AMENDED.

Discussion: None

Vote: A roll call vote was called. The motion carried.

REP. ANDERSON was asked to carry SB 310 as amended on the House floor.

REP. BACHINI suggested that the committee determine which members will be appointed to the conference committee. REP. ANDERSON, REP. HAYNE, REP. STOVALL, and REP. ENDY submitted their names to Chairman Keller.

ADJOURNMENT

Adjournment: 4:44 P.M.

Vern Keller

VERN KELLER, Chairman

Jaeleene Racicot

JAELENE RACICOT, Secretary

VK/jr

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL

DATE

3/25/93

NAME	PRESENT	ABSENT	EXCUSED
REPRESENTATIVE SHIELL ANDERSON	✓		
REPRESENTATIVE BOB BACHINI	✓		
REPRESENTATIVE JOE BARNETT V.C.	✓		
REPRESENTATIVE JODY BIRD	✓		
REPRESENTATIVE ERVIN DAVIS	✓		
REPRESENTATIVE BILL ENDY	✓		
REPRESENTATIVE HARRIET HAYNE	✓		
REPRESENTATIVE DON LARSON MIN. V.C.	✓		
REPRESENTATIVE GARY MASON	✓		
REPRESENTATIVE BILL REHBEIN	✓		
REPRESENTATIVE SAM ROSE	✓		
REPRESENTATIVE DORE SCHWINDEN	✓		
REPRESENTATIVE WILBUR SPRING			✓
REPRESENTATIVE WAYNE STANFORD	✓		
REPRESENTATIVE JAY STOVALL	✓		
CHAIRMAN VERN KELLER	✓		

HOUSE STANDING COMMITTEE REPORT

March 27, 1993

Page 1 of 4

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that Senate Bill 310 (third reading copy -- blue) be concurred in as amended.

Signed: _____
Vern Keller, Chair

And, that such amendments read: Carried by: Rep. Anderson

1. Title, page 1, line 18.

Following: "OF"

Insert: "THE FORFEITURE OF"

2. Title, page 1, line 19.

Strike: "FORFEITED"

3. Page 10.

Following: line 15

Insert: "(11) "Late claim" means a claim forfeited pursuant to the conclusive presumption of abandonment under 85-2-226."

ReNUMBER: subsequent subsections

4. Page 13.

Following: line 14

Insert: "(10) "Late claim" means a claim forfeited pursuant to the conclusive presumption of abandonment under 85-2-226."

ReNUMBER: subsequent subsections

5. Page 13, line 12.

Following: "that"

Insert: "under 85-2-226, as interpreted by the Montana supreme court,"

6. Page 19, line 8.

Following: "Accordingly,"

Insert: "with respect only to a basin that has not been closed to further appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter prior to [the effective date of this act],"

Committee Vote:

Yes 15, No 1.

691105SC.Hpf

7. Page 20, lines 2 through 4.

Following: "(a)"

Strike: remainder of line 2 through "claim" on line 4

Insert: "a late claim must be"

8. Page 20, line 5.

Strike: "prior"

9. Page 20, lines 5 through 8.

Strike: ", and" on line 5 through "and" on line 9

Insert: "that have taken place prior to the inclusion of the late claim in the adjudication;

(b) the person asserting a late claim may request that a decree previously entered be reopened or may object to matters previously determined on the merits by the water court only to the extent that the request or objection is otherwise authorized by law and is based on a claim of water right filed on or before April 30, 1982, unless the person asserting a late claim also has filed a claim on or before April 30, 1982;"

Renumber: subsequent subsections

10. Page 20, lines 10 and 11.

Following: "(b)" on line 10

Strike: remainder of line 10 through "1996," on line 11

Insert: "a person asserting a late claim"

11. Page 20, line 15.

Following: "I"

Insert: "except to the extent that right or standing to object exists based on a claim of water right filed on or before April 30, 1982,"

Following: "protection"

Insert: "for the right represented in the late claim"

12. Page 20, line 18.

Strike: "and"

13. Page 20, line 19 through page 21, line 12.

Strike: subsections (c) and (d) in their entirety

Insert: "(d) if the water judge, following objection by another person asserting a claim, finds that a right represented in a late claim was the subject of a prior order or decree by the water judge, the water judge shall award costs and reasonable attorney fees to the person or persons filing the objection;

(e) a person who has a late claim may be found liable for costs and damages incurred by another person who proves by a preponderance of the evidence that the costs and

damages were incurred as a result of actions undertaken in reasonable reliance upon a late claim and the conclusive presumption of abandonment provided in 85-2-226. A claim for damages and costs under this subsection (e) must be filed in a court of general jurisdiction on or before July 1, 1998. The court of general jurisdiction in which the action is commenced may, upon motion, certify the case to the water court for subordination of the right asserted in the late claim if subordination will cure the alleged damage.

(f) the water judge may subordinate an existing right asserted in a late claim to a claim filed on or before April 30, 1982, to a reserved water right compact negotiated or to a permit issued pursuant to this chapter if and to the extent that an objection is filed under this part by a person entitled to subordination by July 1, 1998, and the objector proves by a preponderance of the evidence that the objector has reasonably relied to the objector's detriment upon the failure to file the existing right on or before April 30, 1982, and the conclusive presumption of abandonment provided in 85-2-226."

14. Page 21, line 15.

Following: "1996"

Insert: ", and shall notify a person who files a claim after July 1, 1996, that the claim will not be accepted"

15. Page 22, line 9.

Strike: "(3)(b)"

Insert: "(3)(c)"

16. Page 22, line 12.

Following: "of"

Strike: "\$300"

Insert: "\$100, which must be deposited in the water rights adjudication account"

17. Page 22.

Following: line 12

Insert: "(b) If an objection is filed to a late claim, the water judge shall assess an additional fee of \$200 against the person asserting the late claim, which fee must be deposited in the water rights adjudication account."

Renumber: subsequent subsection

18. Page 36, lines 16 through 20.

Strike: section 10 in its entirety

Insert: "NEW SECTION Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 11. Contingent voidness. If a part of [this act] is found to establish a condition under which the provisions of Title 85 do not provide for a general stream adjudication for which the United States has waived its immunity from suit under 43 U.S.C. 666 or if a part of 85-2-221(3)(c), as amended by [this act], is invalid, then [this act] is void."
Renumber: subsequent section

-END-

HOUSE OF REPRESENTATIVES
AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL VOTE

DATE 3/25/93 BILL NO. SB 310 NUMBER _____

MOTION: _____

SB 310 TO BE CONCURRED IN
AS AMENDED

NAME	AYE	NO
REPRESENTATIVE SHIELL ANDERSON	✓	
REPRESENTATIVE BOB BACHINI	✓	
REPRESENTATIVE JOE BARNETT VICE CHAIRMAN	✓	
REPRESENTATIVE JODY BIRD	✓	
REPRESENTATIVE ERVIN DAVIS	✓	
REPRESENTATIVE BILL ENDY	✓	
REPRESENTATIVE HARRIET HAYNE	✓	
REPRESENTATIVE DON LARSON, MINORITY VICE CHAIR.	✓	
REPRESENTATIVE GARY MASON	✓	
REPRESENTATIVE BILL REHBEIN	✓	
REPRESENTATIVE SAM ROSE		✓
REPRESENTATIVE DORE SCHWINDEN	✓	
REPRESENTATIVE WILBUR SPRING	✓	
REPRESENTATIVE WAYNE STANFORD	✓	
REPRESENTATIVE JAY STOVALL	✓	
CHAIRMAN VERN KELLER	✓	

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL VOTE

DATE 3/25/93 BILL NO. SB 310 NUMBER _____

MOTION: _____

TO ACCEPT THE FENNER
AMENDMENTS:

NAME	AYE	NO
REPRESENTATIVE SHIELL ANDERSON	✓	
REPRESENTATIVE BOB BACHINI	✓	
REPRESENTATIVE JOE BARNETT VICE CHAIRMAN	✓	
REPRESENTATIVE JODY BIRD	✓	
REPRESENTATIVE ERVIN DAVIS	✓	
REPRESENTATIVE BILL ENDY	✓	
REPRESENTATIVE HARRIET HAYNE	✓	
REPRESENTATIVE DON LARSON, MINORITY VICE CHAIR.		✓
REPRESENTATIVE GARY MASON	✓	
REPRESENTATIVE BILL REHBEIN	✓	
REPRESENTATIVE SAM ROSE		✓
REPRESENTATIVE DORE SCHWINDEN		✓
REPRESENTATIVE WILBUR SPRING	✓	
REPRESENTATIVE WAYNE STANFORD	✓	
REPRESENTATIVE JAY STOVALL	✓	
CHAIRMAN VERN KELLER	✓	

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL VOTE

DATE 3/25/93 BILL NO. SB 310 NUMBER _____

MOTION: _____

PROTECT THE INTEGRITY OF RATIFIED
COMPACTS

NAME	AYE	NO
REPRESENTATIVE SHIELL ANDERSON	✓	
REPRESENTATIVE BOB BACHINI	✓	
REPRESENTATIVE JOE BARNETT VICE CHAIRMAN	✓	
REPRESENTATIVE JODY BIRD	✓	
REPRESENTATIVE ERVIN DAVIS	✓	
REPRESENTATIVE BILL ENDY	✓	
REPRESENTATIVE HARRIET HAYNE	✓	
REPRESENTATIVE DON LARSON, MINORITY VICE CHAIR.	✓	
REPRESENTATIVE GARY MASON	✓	
REPRESENTATIVE BILL REHBEIN	✓	
REPRESENTATIVE SAM ROSE	✓	
REPRESENTATIVE DORE SCHWINDEN	✓	
REPRESENTATIVE WILBUR SPRING	✓	
REPRESENTATIVE WAYNE STANFORD	✓	
REPRESENTATIVE JAY STOVALL	✓	
CHAIRMAN VERN KELLER	✓	

Amendments to Senate Bill No. 310
Third Reading Copy

For the Committee on Agriculture

Prepared by Robert Person
March 26, 1993

1. Title, line 18.
Following: "OF"
Insert: "THE FORFEITURE OF"
2. Title, line 19.
Strike: "FORFEITED"
3. Page 10.
Following: line 15
Insert: "(11) 'Late claim' means a claim forfeited pursuant to the conclusive presumption of abandonment under 85-2-226."
Renummer: subsequent subsections
4. Page 13.
Following: line 14
Insert: "(10) 'Late claim' means a claim forfeited pursuant to the conclusive presumption of abandonment under 85-2-226."
Renummer: subsequent subsections
5. Page 18, line 12.
Following: "that"
Insert: "under 85-2-226, as interpreted by the Montana supreme court,"
6. Page 19, line 8.
Following: "Accordingly,"
Insert: "with respect only to a basin that has not been closed to further appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter prior to [the effective date of this act],"
7. Page 20, lines 2 through 4.
Following: "(a)"
Strike: remainder of line 2 through "claim" on line 4
Insert: "a late claim must be"
8. Page 20, line 5.
Strike: "prior"
9. Page 20, lines 5 through 8.
Strike: ", and" on line 5 through "and" on line 9
Insert: "that have taken place prior to the inclusion of the late claim in the adjudication;
(b) the person asserting a late claim may request that a decree previously entered be reopened or may object to matters previously determined on the merits by the water court only to the extent that the request or objection is

otherwise authorized by law and is based on a claim of water right filed on or before April 30, 1982, unless the person asserting a late claim also has filed a claim on or before April 30, 1982;"

Renumber: subsequent subsections

10. Page 20, lines 10 and 11.

Following: "(b)" on line 10

Strike: remainder of line 10 through "1996," on line 11

Insert: "a person asserting a late claim"

11. Page 20, line 15.

Following: "l"

Insert: "except to the extent that right or standing to object exists based on a claim of water right filed on or before April 30, 1982,"

Following: "protection"

Insert: "for the right represented in the late claim"

12. Page 20, line 18.

Strike: "and"

13. Page 20, line 19 through page 21, line 12.

Strike: subsections (c) and (d) in their entirety

Insert: "(d) if the water judge, following objection by another person asserting a claim, finds that a right represented in a late claim was the subject of a prior order or decree by the water judge, the water judge shall award costs and reasonable attorney fees to the person or persons filing the objection;

(e) a person who has a late claim may be found liable for costs and damages incurred by another person who proves by a preponderance of the evidence that the costs and damages were incurred as a result of actions undertaken in reasonable reliance upon a late claim and the conclusive presumption of abandonment provided in 85-2-226. A claim for damages and costs under this subsection (e) must be filed in a court of general jurisdiction on or before July 1, 1998. The court of general jurisdiction in which the action is commenced may, upon motion, certify the case to the water court for subordination of the right asserted in the late claim if subordination will cure the alleged damage.

(f) the water judge may subordinate an existing right asserted in a late claim to a claim filed on or before April 30, 1982, to a reserved water right compact negotiated or to a permit issued pursuant to this chapter if and to the extent that an objection is filed under this part by a person entitled to subordination by July 1, 1998, and the objector proves by a preponderance of the evidence that the objector has reasonably relied to the objector's detriment upon the failure to file the existing right on or before April 30, 1982, and the conclusive presumption of abandonment provided in 85-2-226."

14. Page 21, line 15.

Following: "1996"

Insert: ", and shall notify a person who files a claim after July 1, 1996, that the claim will not be accepted"

15. Page 22, line 9.

Strike: "(3)(b)"

Insert: "(3)(c)"

16. Page 22, line 12.

Following: "of"

Strike: "\$300"

Insert: "\$100, which must be deposited in the water rights adjudication account"

17. Page 22.

Following: line 12

Insert: "(b) If an objection is filed to a late claim, the water judge shall assess an additional fee of \$200 against the person asserting the late claim, which fee must be deposited in the water rights adjudication account."

Renumber: subsequent subsection

18. Page 36, lines 16 through 20.

Strike: section 10 in its entirety

Insert: "NEW SECTION Section 10. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

NEW SECTION. Section 11. Contingent voidness. If a part of [this act] is found to establish a condition under which the provisions of Title 85 do not provide for a general stream adjudication for which the United States has waived its immunity from suit under 43 U.S.C. 666 or if a part of 85-2-221(3)(c), as amended by [this act], is invalid, then [this act] is void."

Renumber: subsequent section

Senate Members
GARY C. AKLESTAD
VICE CHAIRMAN
DELWYN GAGE
MIKE HALLIGAN
J.D. LYNCH

Executive Director
ROBERT B. PERSON



EXHIBIT
DATE 3/25/93
SB 310

House Members
RED MENAHAN
CHAIRMAN
JAN BROWN
MARY LOU PETERSON
JIM RICE

Montana Legislative Council

Office of the Executive Director

Room 138 • State Capitol
Helena, Montana 59620-1706
(406) 444-3064
FAX (406) 444-3036

March 25, 1993

TO: House Agriculture Committee
FROM: Bob Person *Bob*
RE: Senate Bill 310 amendment options

I have enjoyed working with several members of the Agriculture Committee to review and edit potential amendments for SB 310. These amendments have been either proposed before the committee or discussed with a member of the committee.

I have outlined below the major options available to the committee. Of course, other amendments of which I am not aware may also exist. Should the committee choose to follow one or more options that require amendment, it would be easier for a subcommittee to formulate a final recommendation based on the overall committee direction than to try to finalize amendments in full committee today.

Major Options for SB 310

1. Concur in the bill
2. Do not concur
3. Concur as amended
 - a. Janice Rehberg's amendments (attached as SB031001.arp)
 - b. Technical amendments included in Janice Rehberg's proposal -- leaves late claims subordinated to all others (attached as SB031002.arp)
 - c. Discriminate between late claims evidencing filing by mail or execution before April 30, 1982 and other late claims (attached as SB031003.arp)
 - d. Protect integrity of ratified compacts as proposed by the Northern Cheyenne (attached as SB031004.arp)
 - e. Alternative to Rehberg amendment #14 to reduce the filing fee to \$150 instead of \$100 and state a purpose for its use (attached as SB031005.arp).

\SB0310ex.amd

DATE 3/25/93
SB 310

Amendments to Senate Bill No. 310
Third Reading Copy

Based on Janice Rehberg's Proposals

For the Committee on Agriculture

Prepared by Robert Person
March 24, 1993

1. Title, line 18.

Following: "OF"

Insert: "THE FORFEITURE OF"

2. Title, line 19.

Strike: "FORFEITED"

3. Page 10.

Following: line 15

Insert: "(11) "Late claim" means a claim forfeited pursuant to
the conclusive presumption of abandonment under 85-2-226."

Renumber: subsequent subsections

4. Page 13.

Following: line 14

Insert: "(10) "Late claim" means a claim forfeited pursuant to
the conclusive presumption of abandonment under 85-2-226."

Renumber: subsequent subsections

5. Page 18, line 12.

Following: "that"

Insert: "under 85-2-226, as interpreted by the Montana supreme
court,"

6. Page 20, lines 2 through 4.

Following: "(a)"

Strike: remainder of line 2 through "claim" on line 4

Insert: "a late claim must be"

7. Page 20, line 5.

Strike: "prior"

8. Page 20, lines 5 through 8.

Strike: ", and" on line 5 through "and" on line 9

Insert: "that have taken place prior to the inclusion of the late
claim in the adjudication;

(b) the claimant may request that a decree previously
entered be reopened or may object to matters previously
determined on the merits by the water court only to the
extent that the request or objection is otherwise authorized
by law and is based on a claim of water right filed on or
before April 30, 1982, unless the claimant also has filed a
claim on or before April 30, 1982;"

Renumber: subsequent subsections

9. Page 20, lines 10 and 11.

Following: "(b)" on line 10

Strike: remainder of line 10 through "1996," on line 11

Insert: "a person asserting a late claim"

10. Page 20, line 15.

Following: "l"

Strike: "or"

Insert: ", unless the right or standing to object is based on a claim of water right filed on or before April 30, 1982, and is filed"

Following: "protection"

Insert: "for the right represented in the late claim"

11. Page 20, line 18.

Strike: "and"

12. Page 20, line 19 through page 21, line 12.

Strike: subsections (c) and (d) in their entirety

Insert: "(d) if the water judge, following objection by another claimant, finds that a right represented in a late claim was the subject of a prior order or decree by the water judge, the water judge shall award costs and reasonable attorney fees to the person or persons filing the objection; and
(e) a person who has a late claim may be found liable for costs and damages incurred by another person who proves by a preponderance of the evidence that the costs and damages were incurred as a result of actions undertaken in reasonable reliance upon a late claim and the conclusive presumption of abandonment provided in 85-2-226. A claim for damages and costs under this subsection (e) must be filed in a court of general jurisdiction on or before July 1, 1998.

(4)(a) The court of general jurisdiction in which an action is commenced under subsection (3) may, upon motion, certify the case to the water court for subordination of the right asserted in the late claim if subordination will cure the alleged damage.

(b) The water judge may subordinate an existing right asserted in a late claim to a claim filed on or before April 30, 1982, to a reserved water right compact negotiated or to a permit issued pursuant to this chapter if and to the extent that an objection is filed under this part by a person entitled to subordination by July 1, 1998, and the objector proves by a preponderance of the evidence that the objector has reasonably relied to the objector's detriment upon the failure to file the existing right on or before April 30, 1982, and the conclusive presumption of abandonment provided in 85-2-226."

Renumber: subsequent subsection

13. Page 21, line 15.

Following: "1996"

Insert: ", and shall notify a person who files a claim after July 1, 1996, that the claim will not be accepted"

14. Page 22, line 9.

Strike: "(3)(b)"

Insert: "(3)(c)"

15. Page 22, line 12.

Following: "of"

Strike: "\$300"

Insert: "\$100, which must be deposited in the water rights adjudication account"

16. Page 22.

Following: line 12

Insert: "(b) If an objection is filed to a late claim, the water judge shall assess an additional fee of \$200 against the person asserting the late claim, which fee must be deposited in the water rights adjudication account."

Renumber: subsequent subsection

17. Page 36, lines 16 through 20.

Strike: section 10 in its entirety

Insert: "NEW SECTION Section 10. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

NEW SECTION. Section 11. Contingent voidness. If a part of [this act] is found to establish a condition under which the provisions of Title 85 do not provide for a general stream adjudication for which the United States has waived its immunity from suit under 43 U.S.C. 666 or if a part of 85-2-221(3)(c), as amended by [this act], is invalid, then [this act] is void."

Renumber: subsequent section

Amendments to Senate Bill No. 310
Third Reading Copy

Technical Amendments only from Janice Rehberg's Proposals

For the Committee on Agriculture

Prepared by Robert Person
March 24, 1993

1. Title, line 18.

Following: "OF"

Insert: "THE FORFEITURE OF"

2. Title, line 19.

Strike: "FORFEITED"

3. Page 10.

Following: line 15

Insert: "(11) "Late claim" means a claim forfeited pursuant to
the conclusive presumption of abandonment under 85-2-226."

ReNUMBER: subsequent subsections

4. Page 13.

Following: line 14

Insert: "(10) "Late claim" means a claim forfeited pursuant to
the conclusive presumption of abandonment under 85-2-226."

ReNUMBER: subsequent subsections

5. Page 20, lines 2 through 4.

Following: "(a)"

Strike: remainder of line 2 through "claim" on line 4

Insert: "a late claim must be"

6. Page 20, lines 10 and 11.

Following: "(b)" on line 10

Strike: remainder of line 10 through "1996," on line 11

Insert: "a person asserting a late claim"

7. Page 21, line 15.

Following: "1996"

Insert: "; and shall notify a person who files a claim after July
1, 1996, that the claim will not be accepted"

8. Page 22, line 9.

Strike: "(3)(b)"

Insert: "(3)(c)"

9. Page 22, line 12.

Following: "of"

Strike: "\$300"

Insert: "\$100, which must be deposited in the water rights
adjudication account"

10. Page 22.

Following: line 12

Insert: "(b) If an objection is filed to a late claim, the water judge shall assess an additional fee of \$200 against the person asserting the late claim, which fee must be deposited in the water rights adjudication account."

Renumber: subsequent subsection

11. Page 36, lines 16 through 20.

Strike: section 10 in its entirety

Insert: "NEW SECTION Section 10. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 11. Contingent voidness. If a part of [this act] is found to establish a condition under which the provisions of Title 85 do not provide for a general stream adjudication for which the United States has waived its immunity from suit under 43 U.S.C. 666 or if a part of 85-2-221(3)(c), as amended by [this act], is invalid, then [this act] is void."

Renumber: subsequent section

Amendments to Senate Bill No. 310
Third Reading Copy

Differentiating the Subordination of "Postmark" Filings

For the Committee on Agriculture

Prepared by Robert Person
March 25, 1993

1. Page 10.

Following: line 15

Insert: "(11) "Late claim" means a claim forfeited pursuant to
the conclusive presumption of abandonment under 85-2-226."

Renumber: subsequent subsections

2. Page 13.

Following: line 14

Insert: "(10) "Late claim" means a claim forfeited pursuant to
the conclusive presumption of abandonment under 85-2-226."

Renumber: subsequent subsections

3. Page 20, line 25.

Strike: "; and"

Insert: "."

4. Page 21, lines 1 through 12.

Strike: lines 1 through 12 in their entirety

Insert: "(4) A late claim is subordinate to all federal and
Indian reserved water rights established by compact or
decree under this chapter.

(5) A late claim that was not placed in the United
States mail and postmarked on or before April 30, 1982, or,
if there is no evidence of the date of mailing, for which
there is evidence of execution on or before April 30, 1982,
and actual receipt by the department on or before May 7,
1982, is, in addition, subordinate to:

(a) all timely filed claims finally adjudicated to be
valid; and

(b) a permit or reservation of water issued under this
chapter if and to the extent that the person holding the
permit or reservation files an objection under this part and
proves that the person holding the permit or reservation
reasonably relied to the detriment of the person holding the
permit or reservation upon the failure of the claimant to
file a claim on or before April 30, 1982."

Renumber: subsequent subsection



• MORNING •
The Morning Star

NORTHERN CHEYENNE TRIBE
INCORPORATED

P.O. Box 122

LAME DEER, MONTANA 59042

EXHIBIT 14

DATE 3/25/93

SB 310

• MORNING •
The Morning Star

March 22, 1993

Joseph P. Mazurek, Montana Attorney General
Chris D. Tweeten, Chief Deputy, Montana Attorney General
Harley Harris, Deputy, Montana Attorney General
Department of Justice
215 N. Sanders
Helena, Mt. 59620-1401

RE: SENATE BILL 310

Dear Joseph, Chris and Harley,

Senate Bill 310 was now amended, and as we understand it, would still give late water filings a priority on the stream which would be a priority date senior to the Tribe's who negotiate compacts with the State. In stream where excess water exists this is probably fine. In our case however, the State of Montana, through legislation enacted by the Senate and House is signed by the Governor, two short years ago, promised us that the Rosebud Creek, as part of our settlements and assistance in receiving over 30 million dollars for the State of Montana to repair the State owned Tongue River Reservoir, would place a moratorium on any further non-Cheyenne water rights filings on the Rosebud. If Senate Bill 310, or any legislation ever enacted by Montana, allows more water rights filings on the Rosebud than the State of Montana has breached the Northern Cheyenne - Montana Water Rights Settlement Compact. We would strongly suggest that the State of Montana amend the Senate Bill 310 to exclude it's application to any watershed that has been closed. If the State of Montana can break promises to the Cheyenne Tribe before the ink is dry on our Compact, it would seem to us that the new working arrangements we have tried so hard to develop and maintain the last four years need to also be breached. We await your speedy response and hope you three, as the top three attorneys for the State, can get the Senators and Representatives to understand that Senate Bill 310, as now written, breaks the water treaty you solemnly accepted twenty three (23) months ago.

Most Sincerely Yours,

Lievando Fisher
Lievando Fisher, President
Northern Cheyenne Tribe

cc: file

LITTLE WOLF AND MORNING STAR - Out of defeat and exile they led us back to Montana and won our Cheyenne homeland that we will keep forever.

Amendments to Senate Bill No. 310
Third Reading Copy

EXHIBIT 1 I
DATE 3/25/93
SB 310

Protecting the Integrity of Ratified Compacts

For the Committee on Agriculture

Prepared by Robert Person
March 25, 1993

1. Page 19, line 8.

Following: "Accordingly,"

Insert: "with respect only to a basin that has not been closed to further appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter prior to [the effective date of this act],"

EXHIBIT LJ
DATE 3/25/93
SB 310

Amendments to Senate Bill No. 310
Third Reading Copy

Late Claim Filing Fee Alternative

For the Committee on Agriculture

Prepared by Robert Person
March 25, 1993

1. Page 22, line 12.

Following: "of"

Strike: "\$300"

Insert: "\$150, which must be deposited in the water rights
adjudication account for the examination of late claims by
the department and for the publication of notices required
under 85-2-213(2)"

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 14833

IN THE MATTER OF THE PETITION
OF THE STATE OF MONTANA FOR
AN ORDER REQUIRING THE FILING
OF STATEMENTS OF CLAIM TO THE
USE OF WATER IN MONTANA.

WATER RIGHTS ORDER

PER CURIAM:

A petition having been filed by the Attorney General of the State of Montana pursuant to Chapter 697, Laws of 1979, requesting, among other things, that this Court issue an order as provided therein within 10 days of the filing of his petition.

IT IS NOW ORDERED as follows pursuant to Section 16, Chapter 697, Laws of 1979:

FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT IN A CONCLUSIVE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED WATER RIGHT HAS BEEN ABANDONED. This order is notice of commencement of procedures for the general adjudication of existing rights to the use of water and of the requirement to file a claim for certain existing rights to the use of water. Every person, including but not limited to an individual, partnership, association, public or private corporation, city or other municipality, county, state agency or the State of Montana, and federal agency of the United States of America on its own behalf or as trustee for any Indian or Indian tribe, asserting a claim to an existing right to the use of water arising prior to July 1, 1973, is ordered to file a statement of claim to that right with the Department of Natural Resources and Conservation of the State of Montana no later than January 1, 1982. Claims for stock and individual as opposed to municipal domestic uses based upon instream flow or groundwater sources are exempt from this requirement; however, claims for such uses may be voluntarily filed. Claims filed with the department in the Powder River Basin in a declaration filed pursuant to the order of the Department of Natural Resources and Conservation or a district court issued pursuant to Sections 8 and 9 of Chapter 452, Laws of 1973, or under Sections 3 and 4 of Chapter 485, Laws of 1975, are also exempt.

For further information, contact the Department of Natural Resources and Conservation, Helena, Montana, for a copy of the law and an explanation of it.

DATED this 8th day of June, 1979.

/s/ Frank I. Haswell
CHIEF JUSTICE

JUSTICES

(/s/ John C. Sheehy

(/s/ John Conway Harrison

(/s/ Daniel J. Shea

(/s/ Gene B. Daly

DATE 3/25/93
SB 310

STATEWIDE ADJUDICATION

Early in 1979, the Forty-sixth Montana Legislature passed Senate Bill 76, a law requiring the court adjudication of water rights in Montana. A copy of the Montana Supreme Court Order No. 14833 initiating this action appears on the reverse side. The first step towards general adjudication of existing water rights in Montana is filing claims for those rights.

FILING CLAIMS

Most persons who claim a Montana water right which originated before July 1, 1973 must file a claim to that right with the Department of Natural Resources and Conservation at one of the below listed offices no later than January 1, 1982. Review the exemptions in the Order to determine whether you need to file a Water Rights Statement of Claim. The proper forms and instructions for filing your Water Rights Statement of Claim will be available in November 1979 at your County Clerk and Recorder's Office or any of the Water Rights Field Offices listed below.

SPECIAL NOTE TO LENDING INSTITUTIONS

Lending institutions holding property titles should forward this notice to the individual purchasing the land so that he may start compiling the information needed for the Water Rights Statement of Claim.

SPECIAL NOTE TO CITY DWELLERS

If you are served by a centralized water system, it is the responsibility of the system owner to file a claim on the water rights. If you have an individual well, or pump from a stream or spring, please examine the exemptions in the Order to determine whether you need to file a Water Rights Statement of Claim.

WATER RIGHTS FIELD OFFICES

1245 North 29th Street
Billings, MT 59101
(Phone 248-6540)

Highway 93 North
P.O. Box 224
Kalispell, MT 59901
(Phone 755-9288)

613 Northeast Main St.
P.O. Box 438
Lewistown, MT 59457
(Phone 538-7459)

32 South Ewing
Helena, MT 59601
(Phone 449-3634)

720 First Street
P.O. Box 1828
Havre, MT 59501
(Phone 265-5516)

110 Fifth Street So.
Room 118
P.O. Box 894
Glasgow, MT 59230
(Phone 228-2561)

818 Burlington Ave.
Missoula, MT 59801
(Phone 721-4284)

Corner Main & North Prairie
P.O. Box 276
Miles City, MT 59301
(Phone 232-6359)

114 North Lincoln Avenue
P.O. Box 598
Broadus, MT 59317
(Phone 436-2241)

WATER JUDGES

To carry out the court adjudication of existing water rights, the State has been divided into four water divisions. Each division is presided over by a Water Judge. The divisions and judges are:

THE YELLOWSTONE DIVISION, consisting of areas drained by the Yellowstone and Little Missouri rivers and any remaining areas in Carter County.

THE LOWER MISSOURI DIVISION, consisting of areas drained by the Missouri River from below the mouth of the Marias River and any areas in Glacier and Sheridan counties.

THE UPPER MISSOURI DIVISION, consisting of areas drained by the Missouri River to below the mouth of the Marias River.

THE CLARK FORK DIVISION, consisting of areas drained by the Clark Fork River, the Kootenai River, and remaining areas in Lincoln County.

HON. DIANE G. BARZ, Water Judge
Yellowstone Division
Yellowstone County Courthouse
Billings, Montana 59101

HON. BERNARD W. THOMAS, Water Judge
Lower Missouri Division
Blaine County Courthouse
Chinook, Montana 59523

HON. W. W. LESSLEY, Chief Water Judge
Upper Missouri Division
Gallatin County Courthouse
P.O. Box 1050
Bozeman, Montana 59715

HON. ROBERT M. HOLTER, Water Judge
Clark Fork Division
Lincoln County Courthouse

HOW TO FILL OUT YOUR STATEMENT OF CLAIM FOR EXISTING WATER RIGHTS



Before you say "another blankety-blank form to fill out," let's talk.

Early in 1979, the forty-sixth Montana Legislature passed Senate Bill 76, a law requiring the court adjudication of Water Rights in Montana. The first step, towards state-wide adjudication of existing water rights in Montana, is filing claims for those rights.

It is most important that you make a statement of your claim and do it right. Failure to file a claim results in a conclusive presumption that you have abandoned your water right, and that's disastrous!!!

These are simple, easily read claim forms; scan them, then read them, then fill them out and you'll agree.

We are talking about four (4) claims, Irrigation, Stock Water, Domestic, and Other Uses. You, of course, will use only the one or ones you need, but you will use a specific claim for each right claimed. For example, if you have irrigation and domestic uses, you will use separate claims.

For your convenience, you will find at the back of these instructions: a water conversion table, a land description guide, and directions on how to get maps you will need to file for water rights.

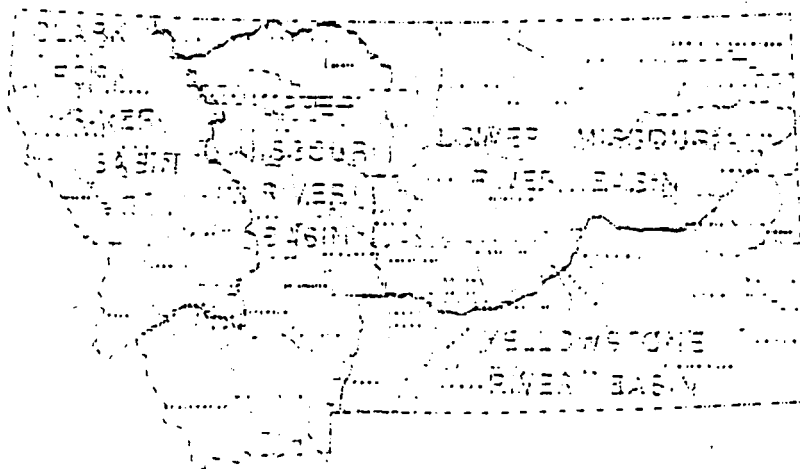
Prepared by:

Hon. Diane G. Barz, Water Judge
Yellowstone River Basin Division

Hon. Bernard W. Thomas, Water Judge
Lower Missouri River Basin Division

Hon. Robert M. Holter, Water Judge
Clark Fork River Basin Division

Hon. W. W. Lessley, Chief Water Judge
Upper Missouri River Basin Division



WATER RIGHTS FIELD OFFICES

1245 North 29th Street
Billings, MT 59101
(Phone 248-6540)

32 South Ewing
Helena, MT 59601
(Phone 449-3634)

818 Burlington Ave.
Missoula, MT 59801
(Phone 721-4284)

Highway 93 North
P.O. Box 224
Kalispell, MT 59901
(Phone 755-9288)

720 First Street
P.O. Box 1828
Havre, MT 59501
(Phone 265-5516)

Corner Main & North Prairie
P.O. Box 276
Miles City, MT 59301
(Phone 232-6359)

613 Northeast Main St.
P.O. Box 438
Lewistown, MT 59457
(Phone 538-7459)

110 Fifth Street So.
Room 118
P.O. Box 894
Glasgow, MT 59230
(Phone 228-2561)

114 North Lincoln Avenue
P.O. Box 598
Broadus, MT 59317
(Phone 436-2241)

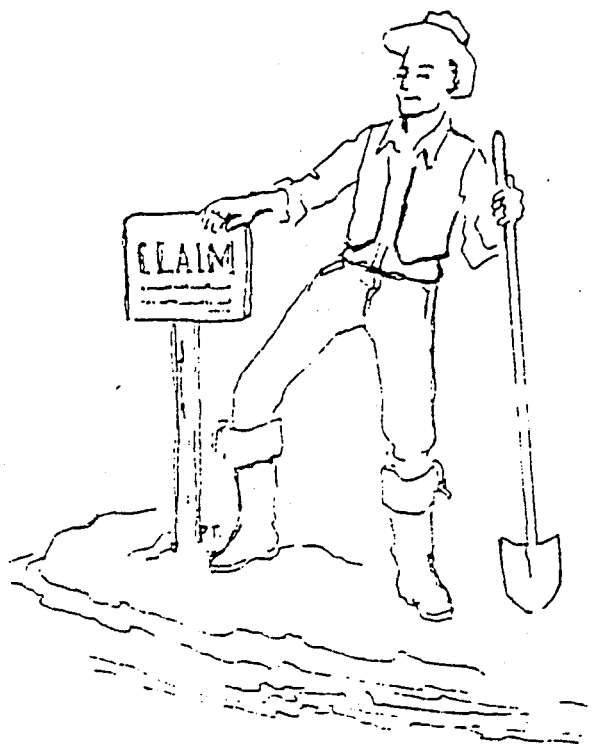
A GUIDESHEET TO

WATER RIGHT DOCUMENTATION

WATER MEASUREMENT CALCULATIONS

LEGAL LAND DESCRIPTIONS

FOR EXISTING WATER RIGHT CLAIMS



Senate Bill 76, a law passed by the Forty-sixth Montana Legislature, calls for a court determination of existing water rights. The law requires most persons who claim a Montana water right that originated before July 1, 1973, to claim that water right before January 1, 1982.

This guidesheet is designed to assist you in three potential problem areas in completing your claim to existing water rights: finding information to prove your claim to water use, determining the amount of water you use, and legally describing the location of your land.

WATER RIGHTS FIELD OFFICES

1537 Avenue D
Suite 121
Billings, MT 59102
(Phone 248-6540)

32 South Ewing
Helena, MT 59601
(Phone 449-3634)

818 Burlington Ave.
P.O. Box 5004
Missoula, MT 59801
(Phone 721-4284)

3220 Highway 93 South
P.O. Box 860
Kalispell, MT 59901
(Phone 755-9288)

720 First Street
P.O. Box 1828
Havre, MT 59501
(Phone 265-5516)

Corner Main & North Prairie
P.O. Box 276
Miles City, MT 59301
(Phone 232-6359)

613 Northeast Main St.
P.O. Box 438
Lewistown, MT 59457
(Phone 538-7459)

110 Fifth Street So.
Room 118
P.O. Box 894
Glasgow, MT 59230
(Phone 228-2561)

117 South Idaho
P.O. Box 1047
Dillon, MT 59725
(Phone 683-6113)

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

EXHIBIT 5
DATE 3/25/93
SB 310



MARC RACICOT, GOVERNOR

LEE METCALF BUILDING
1520 EAST SIXTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-6699
TELEFAX NUMBER (406) 444-6721

PO BOX 202301
HELENA, MONTANA 59620-2301

March 16, 1993

The Honorable Vernon Keller, Chairman
House Agriculture, Livestock and Irrigation Committee
State Capitol
Helena, Montana 59620

Dear Representative Keller:

During last weeks hearing on S.B.310, the "Late Claims" bill, there was some discussion about whether water rights claims should have been received in hand or postmarked by April 30, 1982. Following the hearing Representative Bachini requested the DNRC to provide copies of instructions for filing water rights claims produced by the Department to the Committee.

Attached you will find four separate sets of instructions produced by the DNRC. Also attached are copies of the court orders whereby the Montana Supreme Court changed the deadline for filing water rights claims, first from June 30, 1982 to January 1, 1982, then later extending the deadline until April 30, 1982. As you can see one simply said claims had to be filed by January 1, 1982. The second was more specific saying that claims had to be received by 5:00 pm on April 30, 1982. Although the instructions may have created some confusion, the final notice from the Supreme Court was very specific.

Also during the hearing, the DNRC was asked how many of the late claims may have fallen into that postmarking category. While it is difficult to precisely identify those claims postmarked by 5:00 p.m. on April 30, 1982 because not all postoffices include a time on the postmark and because some postmarks are unreadable, a preliminary count reveals that up to 1200 claims may have been postmarked by April 30, 1982.

I hope this information is helpful to the Committee. My staff and I will be available during Executive Action in the Committee should you or members of the Committee have any questions.

Please do not hesitate to contact me if I can be of any further assistance.

Respectfully,

Handwritten signature of Mark A. Simonich in cursive.

MARK A. SIMONICH
DIRECTOR

MAS/nj
Attachments

124

WATER RIGHT CLAIM PERIOD EXTENDED!

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 14833

IN THE MATTER OF THE PETITION OF THE
ATTORNEY GENERAL FOR AN ORDER RE-
QUIRING THE FILING OF STATEMENTS
OF CLAIMS TO THE USE OF WATER IN
MONTANA.

ORDER

PER CURIAM:

Pursuant to the authority invested in us by Chapter 485, Session Laws of 1975, and following a hearing in the above-entitled matter,

IT IS ORDERED:

(1) The final date for filing statements of claims to existing rights to the use of water in this State arising prior to July 1, 1973, is hereby extended to Friday, April 30, 1982, at 5:00 p.m.

(2) No further extensions for filing statements of claims to such existing water rights will be granted.

(3) This order shall not apply to statements of claims to existing rights to the use of

EXHIBIT 6
DATE 3/25/93
SB 310

(5) The Clerk is directed to mail a true copy of this order to all persons who have filed written statements herein in connection with the petition of the Attorney General for extension of time or who have appeared at the hearing thereon.

(6) The Department of Natural Resources and Conservation shall cause a copy of this order, printed in not less than 10 point type, to be placed in a prominent and conspicuous place once each week for three successive weeks in all daily newspapers in the State of Montana, and in one weekly newspaper published in each county of the State within 30 days of the date hereof.

(7) The Department of Natural Resources and Conservation shall cause a copy of this order to be placed in a prominent and conspicuous place in each county courthouse in this State within 30 days of the date hereof.

(8) The Department of Natural Resources and Conservation shall provide copies of this order to the press services with offices located in Helena, Montana, within 30 days of the date hereof.

(9) The Attorney General shall, under the authority granted by 43 U.S.C. 666, provide for service of the order upon the United States Attorney General or his designated representative.

DATED this 7th day of December, 1981.

/s/ Frank I. Haswell

Chief Justice

/s/ Gene B. Daly

/s/ John Conway Harrison

/s/ Daniel J. Shea

/s/ John C. Sheehy

/s/ Frank B. Morrison, Jr.

/s/ Fred J. Weber

Justices

JUNE 1981

HOW TO FILL OUT YOUR STATEMENT OF CLAIM FOR EXISTING WATER RIGHTS

EXHIBIT 7
DATE 3/25/93
SB 310

I. BACKGROUND

In 1979, the Montana Legislature passed Senate Bill 76, a law authorizing a process to adjudicate claims of existing water rights. "Existing water rights" originated before July 1, 1973, and were generally established by putting water to beneficial use. As used here, a water right is:

- 1) a specific quantity of water;
- 2) taken from a single water source;
- 3) first used or appropriated on a specific date (commonly referred to as priority date).

Water judges have been appointed to review and confirm valid water right claims in Montana courts. Making complete and accurate claims to your existing water rights is the first step of the adjudication process.

FAILURE TO CLAIM AN EXISTING WATER RIGHT AS REQUIRED BY LAW, WILL RESULT IN A CONCLUSIVE PRESUMPTION THAT YOU HAVE ABANDONED THAT WATER RIGHT.

II. WHO MUST CLAIM THEIR WATER RIGHTS?

Only water rights that originated before July 1, 1973, are to be claimed under Senate Bill 76. If your water rights originated after July 1, 1973, do not file a claim under this program. Water uses that first began after July 1, 1973, should have received either a "Permit to Appropriate Water" or a "Certificate of Water Right" from the Montana Department of Natural Resources and Conservation (DNRC). If you plan a new water development, or any change of an existing development, contact your nearest DNRC field office to make application for a permit. The field offices are

Also, water users are not required to file claims on some pre-1973 uses, but may file claims voluntarily. These exempt water uses are stockwater and domestic (household) uses of:

- 1) groundwater (wells or developed springs), and;
- 2) instream flow (direct use from a stream without using a ditch, pipe, dam, bucket, pump or other diversion method).

All stockwater uses from surface water diversions, such as reservoirs and ditches, must be claimed.

Water rights in the Powder River Basin for which declarations have already been filed with DNRC are exempt from filing claims.

SPECIAL NOTE ABOUT GROUNDWATER USE

Groundwater Codes passed into law in 1961 required that all groundwater uses beginning after January 1, 1962, be recorded in the County Clerk and Recorder's office on a "Notice of Completion" form. If your groundwater use began between January 1, 1962, and July 1, 1973, and no Notice of Completion was recorded in that time period, follow these instructions:

- 1) obtain Form 602, "Notice of Completion of Groundwater Development", from the County Clerk and Recorder's office or from any DNRC field office;
- 2) complete the form and return it, along with a \$5.00 filing fee, to the DNRC field office nearest you.

If the groundwater use has a flow rate of under 100 gallons per minute, the form will be processed and a "Certificate of Water Right" will be recorded in the county courthouse and sent to the owner. The priority date assigned to the water right will be the date DNRC receives the completed Form 602. A water right claim under Senate Bill 76 can be made.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Agriculture
DATE 3/25/93 SPONSOR(S) _____

COMMITTEE

BILL NO. SB 310

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Harold Shervin Harold Shervin Boulder	SELF	with amendments	
Mark Josephson	Self	with amendments	
L. B. Schbert III	Self	with amendments	
Jeff Walker	"	with amendments	
Ruth Walker	"	with amendments	
Jan Reheg	Teigen Land, Sheshele	with Reheg amend.	
Alvin Teigen	" "	"	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 310

Call to Order: By Senator Steve Doherty, on April 14, 1993, at
11:20 a.m.

ROLL CALL

Members Present:

Senator Steve Doherty (D)
Senator Jack (Doc) Rea (D)
Senator Lorents Grosfield (R)
Representative Shiell Anderson (R)
Representative Ray Brandewie (R)
Representative Bob Bachini (D)

Members Excused:

None

Members Absent:

None

Staff Present:

Bob Person, Legislative Council
Michael Kakuk, EQC
Sylvia Kinsey, Secretary

Discussion:

Senator Doherty said he believed the purpose of today's meeting was to find out what the issues of contention were and list them for general intent. He said the meeting today would be short, trying to find the issues we need to have the parties work on. He asked Representative Anderson to recap the action.

Representative Anderson said the House Agriculture committee heard the debate and decided the Senate amendments would subordinate all late claim files and were too harsh. For various and sundry reasons people couldn't get their claims filed on May 30, 1982. In the House Agriculture committee they had amended the Senate version which allowed for the protection of those areas concerning the federal McCarran amendment, basically the amendment would be void if there was some trouble with the federal McCarran amendment which would jeopardize our state water adjudication process, water compact agreements, those water rights that had already been used as part of the agreements would be subordinated. The timely filed users, if they were to place objections for a late file claim and were successful, the attorney's fees and Court costs including witness costs could be awarded to the objector in that case. He said this went through the House on a 73-27 vote and

came back to the Senate where the House amendments were defeated 27-23. As he understands the bill as it stands now, it is supporting all those late claims. There is an amendment "kicking about" that would allow for late postmark claims but it was never offered on the House floor or in the House committee. There are between 1200 and 1300 late claims that would fall into the postmark category and there was talk of allowing these provided the postmark date was within the time limit.

Senator Doherty said there are a lot of ideas and they would try to gather those up and see what might be agreeable to the whole Senate and House.

Senator Rea said he would be interested in seeing the proposals put forth at this time.

Representative Brandewie said he had some amendments he would propose at this time and handed them around. (Exhibit 1) He said his objection to the bill as it came out of the House is primarily against reopening water claims, particularly in western Montana where there are a lot of new owners. He said 99% of the people who filed, got in on time. He sympathized with the people who had postmarked April 30, 1982 and feel they should probably be admitted through a compromise but the compromise should be made so narrow that we don't have a lot of bogus claims. He said it was the person who had a timely claim and was the defendant who would have to spend money to protect his rights and he did not want this to happen.

Representative Bachini said he did not believe anybody wants to take away anybody's water rights and maybe there was a way to do it. He had three amendments he would submit at a later time for the committee to consider. He said the burden of proof would have to be on the late claimants. He believed the committee was trying to find a middle of the road way to address this and not open it wide open which would cause a lot more problems. He would like to listen to some sort of compromise. Those who have a concern should present it to the committee and we should listen to the Attorney General's office (AG) and see what ramifications we might have to deal with.

Chair Doherty said he would like to have some brief comments of about five minutes from the AG's office and then from the people who have been the main opponents and proponents of the bill. Representative Anderson talked about the McCarran amendment, issues to the water compacts, the timely filing claims, and postmark dates, and he said Representative Brandewie has come up with some amendments. The process that would help is for anybody who has amendments to give them to him, as Chair, and he would make sure that anybody who wants a copy of any proposed amendment gets copies well in advance of this committee doing any executive action.

Chris Tweeten, Chief Deputy AG, said he was involved in this bill

from the beginning. He referred to amendments (Exhibit 1) that the executive branch agencies have concurred in. There were some technical changes in those amendments, but the primary substantive change is found for what are called the postmarked claims. Those are claims that were not received by the Department of Natural Resources and Conservation (DNRC) by the 5 o'clock April 30, 1982 but for which there is evidence those claims were postmarked prior to that deadline or notarized and submitted prior to that date and for some reason were simply not received. On the issue of postmarked claims, they think there is reasonable basis for providing postmarked claims with some additional level of remission that are not available to those in general because postmarked claims were all prepared prior to the deadline. That excludes the possibility of these claims that were dredged up later on in the process. The claimant took the necessary steps to submit that water right prior to the deadline but simply because of a misunderstanding, or whatever reason, they were not received. It is important to bear in mind that the postmark claimants still need to be treated as late claimants with respect to water rights compacts that have been negotiated and also in respect to any proceedings that have gone on in water Court. We don't treat the postmark claimants as though they were filing a claim, but as late claimants, and extend to them the additional level of protection with respect to their late claims over and above those other people who are not postmark claimants. He urged the committee's concurrence in these amendments.

Representative Bachini remarked that Mr. Tweeten had said these amendments with the postmark claim would not give them their original priority date but would give them preference over the others.

Mr. Tweeten said as the bill came out of the Senate, there were four or five conditions on late claimants as a condition under which the claimants would be allowed back in. One of those was that they were subject to all prior proceedings, another was they would come in without rights to subject water rights compacts that were reached and a definite right to claim protection of any subordination rights that had been reached in respect to federal reserve water rights in this compact. One of them was the subordination requirement the Senate Bill contains. Their proposal would keep those first two conditions in place with respect to the postmark claims. They still would come in subject to all the prior proceedings and still would come in without standing to object the compacts, without the right to be protected by the compact coordination provisions. They would not come in subject to the other subordination language that is in the bill. Their priority date would not be subordinated to all who filed claims, that would be the additional offering to the postmarked claims.

Chair Doherty asked what the position of the executive branch agencies was on the McCarran amendment, water compact, and the other issues. Mr. Tweeten said they don't think this approach

poses any additional McCarran problems with respect to the right for challenging the jurisdiction of the state Court. We have spoken with the Representatives of the Interior Department but do not have a firm commitment from them at this point, but Mr. Aldrich, the solicitor for the Dept. of Interior, has told us he is not troubled by the idea of letting the postmarked claims back in with respect to the position of adequacy. He said the problem could be that because Montana is letting some claims back in and putting them back in priority, possibly ahead of some federal rights, because of that, our process is not an adequate forum for providing protection for federal rights in the adjudication process. The Supreme Court has indicated that if the Court makes a finding and the state forum is not adequate to protect federal reserve water rights, then a concurrent action can be filed and would proceed in federal courts to adjudicate the federal reserved rights. The problem we are more concerned with in regard to the jurisdiction issue is that some court at some time might, as a result of what the legislature does here, find there are a few cases where there is not an adequate forum for protecting federal rights and federal lawsuits that are in existence now in Montana, might be revitalized and restarted. We might be forced to defend our rights in two forums at the same time. They do not think the postmark approach creates that problem for us.

Senator Bachini asked about the time limit on this and was told the proposal they have is that the evidence that the claim was in fact postmarked on April 30, 1982 or before. Also the claims on which there was no postmarking, if the claim was prepared and notarized prior to April 30, 1982 and physically received by the department by May 7.

Senator Rea asked what the difference was between 2 weeks and 2 years. Mr. Tweeten said the reason this is a rational basis for providing this information for the postmark claims is because by the time the deadline arrived, they had prepared the water rights, prepared the claims and they had submitted their material to the department. It is just a misunderstanding on their part as to whether postmarking would be considered binding. They feel that is a rational basis on determining between that group and people who developed their late claims down the road and had not been prepared to make them on the day the deadline passed.

Duke Gilbert, Water Rights Attorney, Dillon, said he thought the House amendments are the only workable way to provide the people of Montana any benefit from this bill. They may need some minor adjustments and he could understand the Representative's concerns about somebody running in a bad or fictitious claim. He did not believe that is the way the bill is set up and is not a particular danger to any extent. The fact that there is a new owner can not create a new water right and new people coming into the area should not increase the number of claims because the original water rights existed in '73. He said the claims may not have been divided, but there should not be any new rights. He

said there will be very few that are water use rights for which there would be no ancient document of their use and of their ownership. The concerns of the McCarran amendment problems are a very low. He said his understanding of the bill is that people have to show that there is a good and valid reason for letting them in. That good and valid reason might be other than that DNRC published bad instructions and instructions that were outdated went on forever. Some of the other issues are also valid and should be treated as such. The bill provides that those water rights had to be valid, existing and in use in 1973.

Chair Doherty summed up Mr. Gilbert's remarks by saying that the effort to allow 1200 out of the 3,000 by postmarks is a good effort, he was not opposed to that, but Mr. Gilbert wants to get the rest in. Mr. Gilbert didn't think the avenues in this bill will help the people you are representing.

Ms. Rehberg, Water Rights Attorney, Helena, said one of the suggestions Representative Brandewie ran off was one she had been discussing with another attorney who had talked with the Water Court. She commented on the proposed amendments which she had a chance to glance at. She mentioned the postmark people and had talked to some of them. She said yes, they would get in, but she also feels there are other people who have legitimate reasons and they should be allowed in as well. We are seeking individualized determinations and those are determined in the Court and it is difficult for a Legislator to make those kinds of determinations. The postmarks make it subject to all compacts, not just those that have been negotiated as of today and they could go on for years. She thought that issue had been resolved since they had a meeting at the AG's office and went over this. Postmarking does not take care of State Lands. They have 2,000 claims of which they think they could get 600 in within the time frame that is set. It does not take care of the city of Anaconda and there are problems for water rights for municipal use. It does not take care of Havre's water rights which are needed to maintain appropriate instream flows to operate their water treatment plant. It does not take care of a lot of people who would be devastated if they are not allowed in. They are suggesting that the burden of proof rest on the late claimant instead of the preponderance of evidence and they will then have to make a better show. She said those who have a legitimate claim should be able to make that claim. It is difficult for the Legislature to make individualized determinations as to how fair this person's rights are as opposed to the right of that person. She would suggest putting that into the court, have the court review the claims and they could make an initial determination. She made several suggestions and said she would have them drafted and distributed.

Representative Anderson asked Ms. Rehberg if she was referring to the Water Court and she said to the department which would send it to the Water Court for initial review. As this is set up, the late claim procedure is that if a claim comes into the department

the department verifies it and then sends it to the Water Court. At that point the Court could look at it and make the late claimant provide additional information. The Court could have the preliminary test, which is something the Court is adapted to do. They could send out notice of hearing, etc.

Chair Doherty summed up her proposal as saying whenever a person has filed a claim, even though that claim came in late, they can still come in and the Court can determine if this is a valid claim before proceeding and the claimant would pay the whatever the cost would be.

Ms. Rehberg said she was not proposing the deadline be changed, it would be attached to the bill. With State Lands it would be impossible to show the deadline, but up until that time, you still have your set deadline of when the claims had to be filed, but then they would go through a screening process. She said the cost could be worked into it and thought it might be able to take it out of the additional fee which would be required. Most of these claims are non-exempt. When you take those claims out that represents a little over a third of the claims which are exempt. As she understands, those will go through the system, regardless of what happens in this bill. The others, a lot of small claims such as stock water, domestic wells or instream stock water and they are not very significant and it would probably not take long for the Court to do those. In longer ones the Court would take longer and the Court could assess fees to pay the cost.

Representative Anderson asked Chris Tweeten his opinion of this approach. Mr. Tweeten said there is a problem here that there is no easy solution to. If you allow wide open access to the Court, no matter what kind of procedure the state Courts have put on it, the cost is there and no matter where you put the burden of proof examination, it is a burden on the Water Court. The second concern he had, with only the description this morning and no further examination, there is an issue in the Water Court with respect to the appropriateness of the Water Court engaging in reviews on its own motion of claims. The issue is whether the Water Court has the power to look into this claim on its own or whether there has to be some sort of an adversary proceeding brought before the Water Court before they are assigned jurisdiction. The proposal this morning sounded to him that the Water Courts move on an ex parte basis, take a look at these claims and make some sort of judgment without the benefit of having a presentation by the parties as to whether a claim is valid or not. He said he was not sure that was appropriate for the Water Court to do this, nor was he sure how efficient the Water Court could be in carrying out the process without such a presentation.

Representative Anderson said it seemed to him it might be difficult to have an adversary proceeding because you may not have an adversary, and it seemed to him the Water Court would be in a position to determine whether these claims were actually

adjudicated claims. He gave the example of taking just the claims that are late filed claims that the Water Court is presently aware of and the person could prove he had acted in a reasonable and timely fashion after he had discovered the error (such as the person who was in jail and when he got out it was too late). We could tighten this up more than it is. He asked if this appeared to be a reasonable compromise.

Mr. Tweeten said they would want to look at the language of the proposal before he could comment. He was still concerned about the propensity that kind of an approach has. He said he would not exclude that possibility without first seeing the language.

Senator Rea told Mr. Tweeten that in the House Mr. Tweeten had stated if you put a date in there on what SB 310 does, on which all claims would have to be in, it should satisfy the McCarran amendment. To his knowledge, they have put a date in there and made these provisions. He asked if he was reading that correctly.

Mr. Tweeten agreed that was what he had said and in respect to the narrow issue of jurisdiction under the McCarran act, that is true. The McCarran amendment has implications beyond it's own language in respect to the state's right to adjudicate water rights. The problem arises in the fact that under the McCarran amendment jurisdiction is concurrent. It gives the state courts the power to adjudicate federal reserve claims, but if the state court has the power, it doesn't exclude the federal court from having the same power.

Representative Bachini said in listening to the proponents and opponents, there are some amendments they are willing to provide to the committee. It would be his suggestion that these two parties get together and work on some amendments they would propose and get those straightened out before presenting them to us.

Chair Doherty said this was an excellent idea and believed the committee knew the issues that had been defined where there is still contention and would suggest the sides get together and come up with amendments and distribute them freely. He said if you want to distribute them yourselves, want to go through him or the secretary, make sure there is one central amendment that depository. We will make sure anybody who wants amendments will get them. He suggested Mr. Gilbert, Ms. Rehberg, Mr. Tweeten and Mr. McIntyre or whoever is on other sides, get their amendments and get the language down within the next 24 hours, pass it around and give everyone a chance to comment on them before we do executive action probably on Friday.

Senator Grosfield said the only issue that came to mind that had not been brought up is the issue of the fee. Apparently the fee was dropped from \$300 to \$100 in the House and he has some concerns about that.

Senator Doherty said we know this is a serious issue. He is receiving phone calls from people who are in danger of losing their water rights and are very concerned about it. He has also received numerous letters from people who don't want the water rights system "tipped over" in Montana. He believed no one wanted to tip the apple cart over, but did want to provide some relief. He asked the parties to let him or Representative Anderson know what kind of progress they are making by tomorrow morning so the committee could meet tomorrow evening or Friday morning.

Representative Brandewie said he believed fees should be commensurate with the cost. He did not know if that meant they should be open, but did not believe there should be any cost to the taxpayer or the state of Montana. There should be some agreement that the claimant should pay for the cost. They get their water rights back and that should be a reward, don't make the state of Montana foot the bill for any of it.

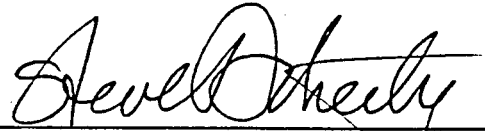
Ms. Rehberg said they tried to split it between cost for the department and if there was an actual hearing in the Water Court, there be an additional cost.

Patty Walker, Glen, said they have a late claim. In 1990 the U. S. filed for a water permit on a spring. They denied the water permit at the water hearing. Two weeks ago the Walkers tried to clean out the spring and they sent the federal marshal out. On Saturday the Walkers received a summons in the mail that they were being sued in federal court. She said it had never occurred to them that they could not use water which flowed through their land, this is their problem and something needs to be done about it.

Senator Grosfield said his personal feeling is he would like to get a bill passed this session. There is a lot of disparity in the kind of bill that comes out, but there is an additional possibility that no bill comes out this session. He said it would be his sense that they would be better off with a bill than without one.

ADJOURNMENT

Adjournment: 12:15 p.m.



SENATOR STEVE DOHERTY, Chair



SYLVIA KINSEY, Secretary

SD/sk

— 100 —

(FREE) CONFERENCE COMMITTEE

ON HOUSE / SENATE BILL # SB 310

DATE 4.13.93

[illegible]

Editor
4-14-93

Amendments to Senate Bill No. 310
Reference Copy

Requested by DM
For the Free Conference Committee

Prepared by Robert Person
April 13, 1993

1. Page 10, lines 24 and 25.

Strike: "For" on line 24 through "interest." on line 25

2. Page 13, line 25 through page 14, line 1.

Strike: "For" on page 13, line 25 through "interest." on page 14
line 1

3. Page 18, line 11.

Strike: "person who failed to file a"

4. Page 18, line 12.

Following: "right"

Insert: "not filed with the department"

5. Page 18, lines 12 and 13.

Strike: "file such claim"

Insert: "be filed"

6. Page 18, line 17.

Strike: "AS" through "COURT."

7. Page 19, line 17.

Strike: "person who failed to file a"

8. Page 19, line 18.

Following: "right"

Insert: "not filed with the department"

9. Page 19, line 19.

Strike: "file"

Insert: "be filed"

10. Page 19, lines 19 and 20.

Strike: "a claim of an existing water right"

11. Page 19, line 22.

Strike: "a person who may have filed"

Insert: "the filing of a late claim in addition to"

12. Page 19, line 23.

Following: "right"

Insert: "filed"

13. Page 19, lines 23 and 24.

Strike: "from filing an additional claim under this section"

14. Page 20, lines 4 through 7.

Strike: "Within" on line 4 through "those" on line 7

Insert: "The"

15. Page 20, line 19.

Strike: "INCLUSION OF THE LATE CLAIM IN THE ADJUDICATION"

Insert: "date of filing"

16. Page 20, line 20.

Page 21, lines 1 and 5.

Strike: "ASSERTING"

Insert: "filing"

17. Page 21, line 1.

Following: "LATE CLAIM"

Insert: "or the person's predecessor in interest"

18. Page 22, lines 10 through 13.

Strike: "ASSERTING" on line 10 through "OR" on line 13

Insert: "filing a late claim, finds"

19. Page 22, line 15.

Following: "JUDGE"

Insert: "or is otherwise without merit"

20. Page 22, line 18 through page 23, line 16.

Strike: subsections (e) and (f) in their entirety

Insert: "(e) A late claim is subordinate to all federal and Indian reserved water rights established by compact or decree under this chapter.

(f) A late claim that was not placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, for which there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, is, in addition, subordinate to:

(i) all timely filed claims finally adjudicated to be valid; and

(ii) a permit or reservation of water issued under this chapter if and to the extent that the person holding the permit or reservation files an objection under this part and proves that the person holding the permit or reservation reasonably relied to the detriment of the person holding the permit or reservation upon the failure of the claimant to file a claim on or before April 30, 1982."

21. Page 24, line 18.

Strike: "\$100"

Insert: "\$150"

22. Page 24, line 20.

Following: "ACCOUNT"

Insert: "for the examination of late claims by the department and for the publication of notices by the department as required under 85-2-213(2)"

23. Page 24, line 22.

Strike: "\$200"

Insert: "\$150"

24. Page 39, line 8.

Following: "SEVERABILITY"

Insert: "-- exception"

Following: "."

Strike: "IF"

Insert: "(1) Except as provided in subsection (2), if"

25. Page 39, line 10.

Following: "EFFECT."

Strike: "IF"

Insert: "Except as provided in subsection (2), if"

26. Page 39.

Following: line 13

Insert: "(2) It is the intent of the legislature that each part of [this act] is essentially dependent upon [section 4], which amends 85-2-221, and that if one part of [section 4], except subsection (3)(f)(ii), is held unconstitutional or invalid, all other parts of [this act] are invalid."

27. Page 39, lines 14 through 20.

Strike: section 11 in its entirety

Renumber: subsequent section

DATE 4-14-93

SENATE COMMITTEE ON Free Conference Committee

BILLS BEING HEARD TODAY: SB 310

Name	Representing	Bill No.	Check One Support Oppose
Patte Walker	self	SB 310 ^{4/14/93}	X
Jeff Walker	Self	SB 310 ^{for} priority	X
Cliff Cox	Self	SB 310	X
W. S. Self III	Self	SB 310	
Lyle Richard Jr	Self	SB 310	X
Peter S. McNamee	Self	SB 310	X
Pat McNamee	"	SB 310	X
Ann Teezen	"	SB 310	X
Marion Johnson	"	SB 310	S

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

FREE CONFERENCE COMMITTEE ON SENATE BILL 310

Call to Order: By Senator Steve Doherty, Chair, on April 19, 1993, at 11:00 a.m.

ROLL CALL

Members Present:

Sen. Steve Doherty (D), Chairman
Sen. "Doc" Rea (D)
Sen. Lorents Grosfield (R)
Rep. Shiell Anderson (R)
Rep. Bob Bachini (D)

Members Excused: Rep. Ray Brandewie

Members Absent: None.

Staff Present: Laura Turman, Committee Secretary
Bob Person, Legislative Council
Michael Kakuk, Environmental Quality Council

Discussion:

Sen. Doherty asked for a report from interested parties concerning consensus agreements and any amendments to SB 310.

Christ Tweeten, Chief Deputy Attorney General, said there had been a meeting Wednesday where the proposed amendments were discussed. They did reach a consensus on a number of technical issues. Those issues have been discussed with Bob Person of Legislative Council. There remains some disagreement with respect to the issues of subordination and the semi-relief clause. Mr. Tweeten said there did not seem to be the prospect of consensus on these issues.

Jan Rehberg, attorney, said there was a possibility for utilizing the default standard which complies with the rules of federal procedure. Ms. Rehberg said there may be a middle ground which would allow them to reach agreement without using subordination.

Rep. Anderson asked Ms. Rehberg if she had discussed the default standard with the Attorney General's office. Ms. Rehberg said she had not, but she would be willing to do that.

Rep. Anderson asked Ms. Rehberg if she had discussed with Judge Loble the amendments dated April 15 which concern the criteria used by the water judge and the evaluation of claims. Ms.

Rehberg said she had spoken with Judge Loble and he had said he wanted the Legislature to set some criteria upon which assessments could be made.

Rep. Anderson asked Ms. Rehberg if Judge Loble was aware of the criteria she had suggested. Ms. Rehberg said he was not. She said that criteria was drawn from the concerns of legislators as to protection from the filing of false claims.

Rep. Anderson asked Ms. Rehberg if she would be able to provide the Committee with some information concerning Judge Loble's opinion of the criteria if the Committee were to meet later in the day. Ms. Rehberg said she would try to reach Judge Loble today.

Sen. Doherty said he was "extremely uncomfortable" with a lobbyist talking to a jurist about the proposed legislation. Sen. Doherty said Judge Loble may be called upon to interpret the legislation in the future. If the Committee would like to speak with Judge Loble, they could discuss technical issues about how the water court works. Sen. Doherty said he would not have introduced into the record a lobbyist's conversation with a judge about proposed legislation which that judge may have to interpret.

Ms. Rehberg said she understood Sen. Doherty's concerns, and she did try to keep her discussions with Judge Loble technical, and that did not include criteria. She had asked him if the format was workable regarding the procedures of the court.

Sen. Doherty asked if there were a set of amendments to which all sides had agreed. He asked if someone would explain the consensus amendments. Mr. Tweeten said there was no single document with all the consensus amendments. He said Bob Person, Legislative Council was working on a set of amendments introduced by Sen. Grosfield, and those amendments include some consensus. The consensus amendments from the meeting on Wednesday (April 14) were numbers 1-18.

Sen. Doherty asked that those amendments be prepared so they could be adopted when the Committee meets later in the afternoon. Sen. Doherty asked that the amendments over which there is disagreement to be prepared separately. Sen. Doherty asked Mr. Tweeten if the consensus amendments included the postmark issue. Mr. Tweeten said they did not.

Sen. Grosfield said he had several sets of amendments, and he was not sure which were consensus amendments and which were not. He said he had asked for additional amendments, the most substantive of which involves a study.

Sen. Doherty said if there were any other amendments, they should be mentioned so Committee members are aware of them. Sen. Doherty asked Sen. Grosfield to go over his ideas.

Sen. Grosfield said he had some "clean up" ideas with regard to the bill, regarding the dates and the fees, for example. He said he had drafted an amendment in anticipation of the current bill not being accepted. He said it might make sense to work on the issue of remission and the postmark issue. However, he said he is convinced this cannot be done without some jeopardy, but it might make sense to work on the issue over the interim. It makes sense to allow the Senate version of SB 310 to take an upper position as a base for other bills which cover some of the same issues. Sen. Grosfield said Michael Kakuk had drafted a study proposal, but changes may need to be made.

Rep. Anderson said the Committee must decide what claims are going to be allowed regarding postmarked claims and late claims. Rep. Anderson asked Sen. Doherty what the water judge might feel regarding workability of late or postmarked claims or preliminary hearings to determine if those claims are valid.

Sen. Doherty said his conversation with Judge Loble centered around his availability to answer technical questions. It did not go beyond that, but Sen. Doherty said the concerns raised by Rep. Anderson may be technical in nature, and the Committee could talk with Judge Loble about them.

Rep. Anderson said he would call Judge Loble.

Rep. Bachini asked if it would be possible for the Committee to meet with Judge Loble to discuss some of the technical issues.

Sen. Grosfield said he was nervous about discussing issues with Judge Loble. He said the discussion could begin with technical matters, but it might lead to other subjects. He said the policy issues are up to the Legislature.

Sen. Rea said the conversation could be limited over the phone in a conference call. The conversation could be limited so as to not jeopardize Judge Loble's ability to rule on the matters at hand.

Rep. Bachini asked Sen. Grosfield if Committee members should not meet with the judge to discuss even technical matters. Sen. Grosfield said the judge has a responsibility to say what issues can or cannot be discussed. If the conversation involves the mechanics of the water court, and how they would deal with some of the issues raised by SB 315, that might be all right.

Rep. Bachini said he agreed with Sen. Grosfield, and a conference call was all right with him.

The Committee recessed while Sen. Doherty telephoned Judge Loble.

Sen. Doherty said the "game plan" was to collect all the amendments. He said the Committee would reconvene at 4:00 p.m. today to go over those amendments. At 3:30, the Committee

members will have a conference call with Judge Loble solely regarding the mechanics of the water court.

Adjournment: Sen. Doherty adjourned the meeting until 3:30.

Call to Order: By Senator Steve Doherty, Chair, on April 19, 1993, at 4:20 p.m.

ROLL CALL

Members Present:

Sen. Steve Doherty (D), Chairman
Sen. "Doc" Rea (D)
Sen. Lorents Grosfield (R)
Rep. Shiell Anderson (R)
Rep. Bob Bachini (D)
Rep. Ray Brandewie (R)

Staff Present: Laura Turman, Committee Secretary
Bob Person, Legislative Council
Michael Kakuk, Environmental Quality Council

Discussion:

Sen. Doherty introduced the members of the Free Conference Committee on SB 310 to Judge Loble.

Sen. Doherty asked Judge Loble what the current work-load of the water court was, and how he would feel about handling an additional 2000-3000 claims. Judge Loble said that would not be difficult. As he sees the bill, individuals will file their new claims, and there may have to be a hearing to determine whether they can file as one proposal, or whether the court will deal with the claims when it gets to that particular basin. Judge Loble said there are some basins which have late claims which the court is not engaged in adjudicating at this time. He said he did not see the additional number of claims as a problem.

Sen. Doherty said if he understood Judge Loble's answer, it would depend upon each basin's adjudication. Judge Loble said that was correct. For example, if all of the late claims came in on the Flathead, it would not have any impact on the adjudication until some period of time when the water court gets to that basin. Judge Loble said if claims came in concerning basins which the court has already gone through, such as the Powder River, the court would not get back to those areas until sometime in the future.

Sen. Rea asked Judge Loble what his feelings were regarding the costs associated with handling these claims. Sen. Rea asked if it would be best to set a flat fee, or to leave it up to the court. Judge Loble said if the Legislature gave the court some

criteria, a flat fee could be determined. It could be done on a sliding fee scale as well. He said there was a lot of different work involved with different claims. For example, a late domestic claim would not receive many objections so it would not cost very much to process it. On the other hand, an irrigation claim competing with another individual may incur significant costs. If the true cost of any claimant were assessed, it would be "fairly high".

Sen. Rea asked Judge Loble how he felt about a \$100.00 filing fee at the time the claimant makes the claim, and if an objection is raised, an additional \$200.00 would go to the water courts. Judge Loble said he did not think those figures were realistic in terms of total time of the water court. Judge Loble said each water master receives \$15.00 per hour and then there was the total cost of the adjudication. He said for the fiscal note, it was anticipated there would be 6000 claims which would extend the adjudication out by 4.8 years. The water court's budget is roughly \$529,000. The per-day cost spent by the water court comes to \$2116.00. Judge Loble said it was anticipated in the fiscal note that each claim would take one day to resolve. He said the minimum cost for any claim would be approximately \$423.00.

Rep. Anderson said there were amendments that would provide for predetermination of whether a late claim was in actually in existence prior to July 1, 1973. Rep. Anderson asked Judge Loble if there would be a conflict of interest making the primary predetermination. Judge Loble said he did not think so. He said that question was currently before the water court. If there is no objection to a claim the water court calls in those claims on its own motion. The court tries to determine if there was existing water use. He said that practice has been challenged, and the court is in the process of briefing that issue. If there are concerns, there are other water judges available to handle such cases.

Rep. Anderson asked Judge Loble if he saw significant costs involved with the late claimants. Judge Loble said there would be significant costs. The Supreme Court of the United States has required that if it is known who could potentially be injured by some governmental agency, those individuals must be given personal notice. Judge Loble said if every person on the Yellowstone River, for example, had to be given personal notice, it could be a lot of people.

Sen. Doherty thanked Judge Loble for his participation in the discussion.

Motion:

Rep. Brandewie moved the amendments prepared by Robert Person on April 19, 1993. (Exhibit #1)

Discussion:

Sen. Doherty asked Chris Tweeten to explain the amendments.

Chris Tweeten, Attorney General's Office, said the term "person" in SB 310 needed to be clarified. Therefore, the bill was put into the passive voice, and the first 12 amendments do that. Mr. Tweeten read the consensus amendments. (Exhibit #1)

Jan Rehberg said there were a variety of options regarding fees, and none was really objectionable. The term "person" refers to not only the person who filed the claim, but also the person currently asserting that right.

Holly Franz said an amendment had been left out of the list of consensus amendments.

Mr. Tweeten said "or is otherwise without merit" needed to be inserted after "water judge" on Line 15, Page 22.

Sen. Doherty said that would be accepted as a friendly amendment. He read the amendment.

Sen. Rea asked Mr. Tweeten about amendment 21, and if the late claimant was entirely responsible for all expenses regardless whether the judge rules that the claim was filed in a timely manner. Mr. Tweeten said that was the consensus. He said the intention was that the late claimant bear the costs even if the claim was determined to be included.

Ms. Rehberg said there was a discussion regarding the friendly amendment, and there was consensus regarding "or is otherwise without merit". This covered the claim in its totality.

Sen. Doherty said the record would show the entire claim is without merit.

Vote:

The motion to adopted the consensus amendments (Exhibit #1) with the addition of the friendly amendment passed UNANIMOUSLY.

Discussion:

Rep. Brandewie asked if the House amendments had been "stripped" from SB 310. Sen. Rea said the House amendments had been rejected.

Sen. Grosfield said the salmon copy of SB 310 included the House amendments.

Bob Person, Legislative Council, said unless it was the Conference Committee's wish to strip all the House amendments, there was no need to do it. The Committee should work with the

reference bill.

Sen. Doherty asked if those who had been working on SB 310 had assumed the House amendments had been adopted. Mr. Tweeten said all the amendments which Mr. Person had worked on refer to the reference bill, with the House amendments in place.

Sen. Doherty said all the House amendments did not need to be stricken, because there was consensus that some of them were all right.

Sen. Grosfield asked if all the consensus amendments were taken care of, or were there some still to be discussed.

Mr. Person provided Committee members with packets of amendments he had worked on. (Exhibit #2) The amendments are numbered SB031007.ARP through SB031017.ARP. The three first sets relate to postmark filings requested by Rep. Bachini. The eleventh amendment provides an alternative way for using evidence. The twelfth relates to late claim procedural matters including a new proposal from Ms. Rehberg. The fourteenth amendment is a language change. Number fifteen is a draft of the amendments requested by Sen. Grosfield. The last amendment, number seventeen, includes everything for which a consensus was not reached.

Sen. Grosfield provided Committee members with the amendment regarding a study. (Exhibit #3) His amendment presumes the Committee will do something with regard to postmarks. Sen. Grosfield said some of his other amendments are included with the consensus amendments, which means there exists some duplication.

Mr. Person said the first three groups of amendments (Exhibit #2) change SB 310 so the bill only relates to the issue of postmarks. The last amendment and Sen. Grosfield's amendments differentiate coordination of postmark filings and other late claims so the degree to which the claims would be subordinated would be considerably less.

Sen. Grosfield asked Mr. Person if that meant the language in the last amendment was the same as his amendment. Mr. Person said that was correct.

Sen. Grosfield said he was not convinced all late claims can be "folded right in". However, he is convinced that postmarked claims can be addressed. If the Committee chooses to deal with postmarked claims, what should be done with the rest of the claims? Rep. Bachini's amendments do nothing with the rest. Sen. Grosfield said one option is to go back to the "essence" of SB 310 as it came out of the Senate, which means they are subordinate to all timely-filed claims. In terms of the study, those claimants should all be included for the time being, and the study would determine if their remission could be improved without jeopardizing anything else, or without significantly

affecting the timely-filed claimants' interests. Sen. Grosfield said that made sense because several basins have been closed this Legislative Session, and if those late-claimants are not dealt with, they will not have an opportunity to file within those (closed) basins. Another reason is that what is being addressed is forfeited claims, not existing rights. Sen. Grosfield said this bill and this issue have received a lot of publicity, and it seemed to him if Montana has a water-short year, there are going to be many people who will be "shut off" because they do not have a right. He said, as it stands now, the Supreme Court has ruled that there is no right, so they are all forfeited. Sen. Grosfield added at least including those people in a subordinate fashion keeps them included.

Rep. Brandewie said the eighth amendment by Rep. Bachini (Exhibit #2) was the one which let in postmarked claimants without subordination. He said they probably ought to be subordinated. He said he did not have much sympathy for studying the possibility of exposing all the timely-filed claims. If there is water available in the drainages of people who forfeited their claims, then they can take some of it. Rep. Brandewie said those claimants who filed in a timely manner should not be threatened by someone with an equal claim filed in an untimely manner. He said not making postmarked claims subordinate was fair, because those individuals have filled out the claim on time, and generally speaking, postmarked days are accepted.

Rep. Anderson asked Sen. Grosfield if his intention was not to subordinate the postmarked claims. Sen. Grosfield said the late claims should be subordinated to compacts already in existence, and that includes Rosebud Creek. He said there is an issue where some basins are further along in the adjudication process than others, and with this type of situation there should be "some sort of subordination." Sen. Grosfield said amendment on the last page (Exhibit #2) addresses the issue of detrimental reliance as well as the issues being discussed. If detrimental reliance can be shown on the forfeiture of a postmarked claim, then it could be subordinate. Sen. Grosfield said that would happen "rarely if at all."

Rep. Anderson said the interim study proposed by Sen. Grosfield makes sense. He asked if the late claims, not the postmarked claims, are allowed in, would there be problems if they were allowed a provisional priority date? He said maybe it would be better to wait on the issue for two years, and let the Water Policy Committee make recommendations. Rep. Anderson said that was his original idea.

Sen. Doherty said if those with the July 1, 1973 date were allowed in, and they were allowed to prove their cases, the Water Policy Committee would have to "figure it out." Sen. Doherty said Sen. Grosfield's suggestion did not give those claimants "a whole loaf" given the basin closures. Over the interim, they may be able to come up with something. He said there may also be the

possibility that there may be no relief for those people, and the best they can get is the 1973 date. Sen. Doherty said this was "uncharted territory", and the Legislature is attempting to provide relief for individuals who have forfeited claims. The Water Policy Committee may come up with a workable mechanism, or their recommendation may be that the Legislature has done its best for people with forfeited claims.

Rep. Brandewie said in western Montana, there are groups of real estate people transferring water rights where was no claim filed timely. Mistakes are being made, and it will take years to resolve. Rep. Brandewie said those with postmarked claims should be included, and be subordinated. He said the best they could do to those who have forfeited is the date of July 1, 1973. He said it is not fair to those who filed in a timely manner to have to come back in two years to fight again. Rep. Brandewie said the Legislature needed to make a definitive decision and move forward.

Sen. Rea asked Sen. Grosfield if the direction the Legislature wants to pursue was included in his amendments. He said it needed to be clear what the intention of the Committee was, if that included a study of the Water Policy Committee. Sen. Grosfield said the study was an option. If postmarked claimants were included and are subordinated to timely-filed claims, there are two options, the first of which is the study. In the absence of the study, it is not clear what will happen. Sen. Grosfield said it was likely that individuals who are not happy will try to put together a lawsuit. He said he was not completely "hung up" on having the study, but it was an attempt to further look at the issue.

Rep. Bachini said he did not believe full subordination would solve all the problems, and the legislation would come up again during the next session. Sen. Grosfield said it would, or there might be a lawsuit.

Rep. Bachini said neither approach would solve the problem. He said he liked the idea of the study, but some type of legislation would likely come up during the next session. Rep. Bachini said when he requested the amendments, he was thinking strictly of the postmark issue. He said he would support only that procedure at this time. He said nobody wants to take away rights that people have had for many years, but it is necessary to examine some of the ramifications.

Rep. Anderson said the time of 4.8 years to process 6000 late claims, as stated by Judge Loble, reflects the date by which the late claimants would have to file. As a practical matter, there would be costs associated with processing the late claims, but during those 4.8 years the court will still be in the process of adjudicating all the timely-filed claims in the closing basins. Rep. Anderson said the Committee faced some decisions regarding the late-filed claims. He said it made "good sense" to bring in

those postmarked claimants, but the Legislature should give the Water Policy Committee a mandate that the issue will be studied. The Committee could tell WPC to keep the water in the place for which it was first adjudicated, and that would give them a direction regarding the inclusion of the late claims and how that would bother the timely filers. Rep. Anderson asked if WPC would have a problem with changing the word "requesting" to "requiring" the study.

Sen. Grosfield asked Michael Kakuk if he knew whether the Water Policy Committee had a full schedule during the interim. Mr. Kakuk, Environmental Quality Council, said as of this moment, there was nothing signed by the Governor directing the Water Policy Committee to study anything during the interim. Mr. Kakuk said the Legislature has had no problems in the past with directing WPC to do a study.

Sen. Doherty said as far as the postmarked claims were concerned, it seemed there was a feeling among Committee members to let the postmarked claimants be included and subordinated only to compacts or adjudicated basins.

Sen. Grosfield read the last page of amendments from Bob Person. (Exhibit #2)

Mr. Person said he had spoken with Mr. Tweeten about making that language more clear. If the claim is not postmarked claim, then it is subordinate to (i) and (ii). Mr. Person said Mr. Tweeten had worked on language that was more clear.

Mr. Tweeten said the postmarked claims would be treated as late claims, meaning they are subordinated to compacts and they lack standing to challenge existing compacts. Postmarked claims are not protected by the subordination language in existing compacts. To separate them from existing late claims, he proposed the following language. (Exhibit #4)

Sen. Grosfield asked Mr. Tweeten if that amendment took care of the postmark issue and "subordinated everything else." Mr. Tweeten said it did.

Jan Rehberg said when Sen. Grosfield said "subordinating to existing compacts" the language in that amendment subordinates all compacts.

Sen. Grosfield said that was a question of policy, to go with existing compacts or all compacts. He said the federal government may claim detrimental reliance.

Sen. Doherty asked Sen. Grosfield what his preference was. Sen. Grosfield said he preferred to go with all compacts, but there was an issue there of time. He said that could take a long time.

Sen. Rea said he would feel more comfortable going with existing

compacts. He said individuals with existing compacts should not have to be subordinated to something that is not even in the works yet.

Sen. Grosfield said there were two or three different entities the Water Commission has been negotiating. He said it has become a budget issue.

Mr. Tweeten said the reason they proposed subordinating to all federal rights was to eliminate the possibility of the federal government claiming prejudice with the admission of the late claims. If the claims are subordinate to all federal rights, then the federal government cannot say it has been injured. Another reason is there are a number of tribal entities and federal agencies with whom they have open negotiations. He said those negotiations are not completed because staff time has been prioritized to focus on compacts which could be completed. They have been told by tribal representatives it is not fair one tribe should receive attention simply for "getting in line first."

Rep. Anderson asked Mr. Tweeten if it would be possible to single out the postmarked claims involved with ongoing negotiations. Mr. Tweeten said he would have to ask DNRC to cross match the postmarked claims on a computer against those basins where there are negotiations. He said the water court has a reopener provision for basins to be reopened.

Rep. Anderson said it seemed like there would be problems with some of the postmarked claims. He said there could be questions with claims not being filed timely but are part of compact agreements.

Mr. Tweeten said he did not think that was the case because the postmarked claims were claims arising out of state law. The only rights being compacted were federal rights.

Rep. Brandewie said the issue seemed too complex to try and separate.

Motion:

Rep. Brandewie moved the adoption of the first amendment from SB031017.ARP (Exhibit #2) including the language proposed by Mr. Tweeten. (Exhibit #4)

Vote:

The motion carried 5-1, with Sen. Rea voting "no".

Discussion:

Mr. Tweeten said amendments 2 and 3 of SB031017.ARP dealt with severability by stating that all parts of the bill are separable with the exception of one subsection, Pages 19-23 of the

reference bill. The House Bill also has contingent avoidance language, which they are comfortable with. Mr. Tweeten said if their amendments are adopted, this language is not necessary. Mr. Tweeten proposed deleting Section 11 of the bill in its entirety, and rewriting the severability clause. The intention is to write a severability clause in which the finding of invalidity with respect to any of the conditions in place on a remission of forfeiture would result in the invalidity of the entire act. Therefore, if any of the conditions found in Subsection C on Pages 19-24, including the adopted subordination language, were to be held by a court as invalid, then those protections would be invalid as well.

Motion/Vote:

Rep. Brandewie moved amendments 2 and 3 of SB031017.ARP as described by Mr. Tweeten. The motion carried 5-1, with Sen. Rea voting "no".

Discussion:

Sen. Grosfield said some of his proposed amendments had already been adopted with the consensus amendments. Sen. Grosfield went over his proposed amendments, SB031015.ARP (Exhibit #2). He said the 18th amendment needed to be stricken because it was mistakenly included. He said the 36th amendment is significant because it removes the limitation of collecting damages for only two years after the filing date.

Rep. Brandewie asked Sen. Grosfield if that amendment extended the statute of limitations for the new filings or all of the claims filed in the past. Sen. Grosfield said it protects those who filed in the past by extending their statute of limitations until damages are sought. It states that an individual with a late claim may be found liable for costs and damages incurred by another person.

Sen. Grosfield continued going over his proposed amendments. He said amendment number 40 should be discussed because it concerns fees. It strikes \$100.00 and inserts \$1,000.00. But, he said the consensus amendments already adopted set the fee at \$150.00. Sen. Grosfield said it was his understanding that an individual had to pay \$40.00 to submit an application as well. He said \$1,000.00 was "a bit steep", but \$150.00 was not enough.

Rep. Brandewie asked Sen. Grosfield if the \$150.00 was for the Department of Natural Resources only, and the actual cost of the water court would be added to it. Sen. Grosfield said that was correct.

Rep. Brandewie said Judge Loble had stated the average cost was around \$400.00 per claim, and more than that if the claim was complicated. He understood that to be the water court part of the expenses, not the Natural Resources part.

Sen. Grosfield said additional fees can be assessed by a water court judge. He said it was his understanding that the water court did not receive anything unless an objection was raised. He said the claim would only go to the water court if an objection were filed. He asked Don MacIntyre to verify this.

Don MacIntyre, Department of Natural Resources, said the water court still deals with all claims, regardless if an objection is raised.

Sen. Doherty said the consensus amendments gave the water court the ability to charge additional fees. Sen. Grosfield said that was only if an objection was filed.

Sen. Rea asked Sen. Grosfield from where the figure of \$1,000.00 came. Sen. Grosfield said it was "picked out of the sky", but the original amount of \$300.00 was too low. He said part of the discussion regarding fees addressed the issue of superfluous claims. He said, at the very least, costs should be covered.

Rep. Anderson asked Sen. Grosfield if there were a way to tie administrative fees with other fees. Sen. Grosfield said, the language on Line 21 of Page 24, "if an objection is filed to a late claim," could be stricken to take care of it.

Sen. Doherty said that would be accepted as a friendly amendment.

Sen. Grosfield said that still did not address the issue of the amount of the initial application. Right now, the amount is set at \$150.00. His amendment would change that to \$1000.00.

Rep. Brandewie suggested the amount be changed to \$500.00 because that was close to the cost of the average claim.

Sen. Rea asked Mr. MacIntyre what the cost was to DNRC. Mr. MacIntyre said \$40.00 was the filing fee, which was "greatly exceeded" years ago. He said it would cost over \$100.00 to verify a claim, and more money to cover the posting of notices. The figure of \$150.00 would be used by the Department for providing adequate notice and verifying claims.

Sen. Rea asked Mr. MacIntyre what happened if a claim was found to be invalid. Mr. MacIntyre said it could be "flagged". On an average, it costs just over \$100.00 to examine a claim.

Sen. Rea asked Mr. MacIntyre what additional costs would be. Mr. MacIntyre said that figure was unknown, and that was what Judge Loble had tried to address during his comments. Judge Loble had said there was no set figure, and he had tried to estimate an average cost. Mr. MacIntyre said that figure did not include the \$150.00.

Sen. Grosfield asked Mr. MacIntyre who received the original \$40.00. Mr. MacIntyre said it went into an account.

Rep. Brandewie said it seemed the figure provided by Judge Loble was the cost of the claim. It also seemed that all those affected, even those subordinate claimants, would have to be notified, which could cost a lot.

Sen. Rea asked Holly Franz to address the issue of fees. Ms. Franz said the fee is split into two parts, and the \$150.00 covers the cost of DNRC. Additional costs are generally costs to the water court which can be assessed on an individual basis. Rep. Brandewie said if \$150.00 is enough, it should be left at that amount.

Sen. Grosfield said, with that in mind, amendment number 40 should be stricken.

Motion/Vote:

Sen. Grosfield moved the adoption of amendments, SB031015.ARP, excluding those amendments which have already been adopted, or reference deleted sections of SB 310. The motion carried 5-1, with Sen. Rea voting "no".

Discussion:

Sen. Grosfield said he did not see how the language on the bottom of Page 24 and the top of Page 25 would work. He said this language addresses when the payments would be made. Sen. Grosfield read the language. He said it does not say what would happen if no payments were made.

Ms. Rehberg suggested adding "upon order of the court" to specify when payments should be made.

Sen. Doherty said "must be paid on or before the entry..." would be stricken, and "upon order of the court" would be added. Ms. Rehberg said that was correct.

Sen. Grosfield said the language came from the Senate Subcommittee that worked on SB 310. He said the way that section is currently worded, it does not seem to work.

Mark Simonich, Department of State Lands, said the Department is anticipating several hundred claims, and they were trying to keep from "wiping out" their budget with processing fees. Late claims that have already been filed have been processed, and they didn't want the Department to incur additional costs for those.

Sen. Doherty asked Mr. Simonich if the Department liked the original language. Mr. Simonich said he did not have a feel for that particular wording, but said there may be a better way to word that section.

Harley Harris, Attorney General's office, said the language in Subsection C at the bottom of Page 24, addressed fees being paid

for decrees and should reference section 3(a) above. He suggested reorganizing the paragraphs.

Motion/Vote:

Rep. Brandewie moved the conceptual amendment to clarify the language in Subsection C, Page 24. The motion carried unanimously.

Motion:

Sen. Grosfield moved the amendment concerning the study, (Exhibit #3)

Discussion:

Sen. Rea suggested the term "request" be changed to "require". Sen. Doherty accepted that as a friendly amendment.

Rep. Anderson said he would like to see language directing the Water Policy Committee to try to find a way individuals can restore their original priority date, rather than having WPC do a study that "leads nowhere". He said there should be an effort allowing the late claimants to keep their original priority date.

Sen. Doherty said there was language in the bill that addressed Rep. Anderson's concerns.

Mr. MacIntyre said the way subordination is currently set up with Sen. Grosfield's amendments, priority dates are kept. They become subordinated to the 1973 date, but the study addresses ways to reduce the subordination.

Rep. Brandewie said he really wanted to help people trying to irrigate their land. He said the study should target "true agricultural" parcels of land. Rep. Anderson that would be difficult to state.

Rep. Brandewie said he wanted to avoid lawsuits and problems. He said he wanted to narrow it down to individuals legitimately being hurt, and not someone who "imagines" they are being hurt.

Sen. Doherty said the direction of the Water Policy Committee was fairly straightforward, and the study has been focused regarding elements to be considered when determining what can be done for those forfeited claimants.

Vote:

The motion to adopt the amendment (Exhibit #3) carried unanimously.

Discussion:

Sen. Doherty said all the adopted amendments would be prepared for the Committee so mistakes could be checked. He said he did not anticipate any substantive changes or policy changes with the adopted amendments, but he would like the Committee to meet again to approve the adopted amendments.

ADJOURNMENT

Adjournment: Sen. Doherty adjourned the meeting at 6:30 p.m.



SEN. STEVE DOHERTY, Chair



LAURA TURMAN, Secretary

SD/LT

ROLL CALL

(FREE) CONFERENCE COMMITTEE

ON HOUSE / SENATE BILL # SB310

DATE 4.19.93 11:00 a.m.

NAME	PRESENT	ABSENT	EXCUSED
Sen Doherty, Chair	✓		
Sen Rhea	✓		
Sen Groszicki	✓		
Rep Anderson	✓		
Rep Brandwiese			✓
Rep Bachini	✓		

ROLL CALL

(FREE) CONFERENCE COMMITTEE

ON HOUSE / SENATE BILL # SB310

DATE 4.19.93 4:20 p.m.

NAME	PRESENT	ABSENT	EXCUSED
Sen Doherty, Chair	✓		
Sen Rhea	✓		
Sen Grosfield	✓		
Rep Anderson	✓		
Rep Blandwine	✓		
Rep Bachini	✓		

Exhibit #1
4-19-93
SB 310

Amendments to Senate Bill No. 310
Reference Copy

Requested by Free Conference Committee
For the Committee

Prepared by Robert Person
April 19, 1993

1. Page 10, lines 24 and 25.

Strike: "For" on line 24 through "interest." on line 25

2. Page 13, line 25 through page 14, line 1.

Strike: "For" on page 13, line 25 through "interest." on page 14
line 1

3. Page 18, line 11.

Strike: "person who failed to file a"

4. Page 18, line 12.

Following: "right"

Insert: "not filed with the department"

5. Page 18, lines 12 and 13.

Strike: "file such claim"

Insert: "be filed"

6. Page 18, line 17.

Strike: "AS" through "COURT."

7. Page 19, line 17.

Strike: "person who failed to file a"

8. Page 19, line 18.

Following: "right"

Insert: "not filed with the department"

9. Page 19, line 19.

Strike: "file"

Insert: "be filed"

10. Page 19, lines 19 and 20.

Strike: "a claim of an existing water right"

11. Page 19, line 22.

Strike: "a person who may have filed"

Insert: "the filing of a late claim in addition to"

12. Page 19, line 23.

Following: "right"

Insert: "filed"

13. Page 19, lines 23 and 24.

Strike: "from filing an additional claim under this section"

14. Page 20, lines 4 through 7.
Strike: "Within" on line 4 through "those" on line 7
Insert: "The"
15. Page 20, line 19.
Strike: "INCLUSION OF THE LATE CLAIM IN THE ADJUDICATION"
Insert: "date of filing"
16. Page 20, line 20.
Page 21, lines 1 and 5.
Strike: "ASSERTING"
Insert: "filing"
17. Page 20, line 25.
Following: "1982"
Strike: the remainder of subsection (b) in its entirety
18. Page 22, lines 9 through 13.
Following: "OBJECTION"
Insert: "under 85-2-233, finds"
Strike: "BY" on line 9 through "OR" on line 13
19. Page 24, line 18.
Strike: "\$100"
Insert: "\$150"
20. Page 24, line 20.
Following: "ACCOUNT"
Insert: "for the examination of late claims by the department and
for the publication of notices by the department as required
under 85-2-213(2)"
21. Page 24, lines 22 and 23.
Strike: "AN" on line 22 through "CLAIM" on line 23
Insert: "against the late claimant all reasonable administrative
costs and expenses that may be incurred by the court due to
the filing of the late claim and the consideration of the
objection"
22. Page 24, line 23.
Strike: "FEE"
Insert: "assessment"

Exhibit #2
4-19-93
SB 310

Amendments to Senate Bill No. 310
Reference Copy

Requested by Rep. Bachini
For the Free Conference Committee

Prepared by Robert Person
April 2, 1993

"Postmark" Filings Only -- Subordinated

1. Title, line 18.
Following: "FORFEITURE OF"
Insert: "CERTAIN"
2. Title, lines 20 through 24.
Strike: "PROVIDING" on line 20 through "REMISSION;" on line 24
3. Title, page 2, line 1.
Strike: "85-2-225, 85-2-226, 85-2-234,"
Insert: "AND"
Following: "85-2-237,"
Strike: "AND"
4. Title, page 2, line 2.
Strike: "85-2-306,"
5. Page 7, line 4.
Following: "PROVIDE"
Insert: "certain"
6. Page 7, line 14.
Following: "WHO"
Insert: "have been recognized as having"
7. Page 7, line 25.
Strike: "; AND"
Insert: "."
8. Page 8, lines 1 through 12.
Strike: lines 1 through 12 in their entirety
9. Page 8, line 15.
Strike: "85-2-225, 85-2-226, 85-2-234,"
Insert: "and"
10. Page 8, line 16.
Strike: "AND 85-2-306,"
11. Page 8, line 17.
Strike: "ACCEPTANCE OF ADDITIONAL STATEMENTS OF CLAIM"
Insert: "adjudication of certain additional claims"
12. Page 10, line 16.
Following: "A CLAIM"

Insert: "that was placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, for which there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, but that was not in the physical possession of the department on or before April 30, 1982, and for that reason is in jeopardy of or has been ruled"

13. Page 10, lines 24 and 25.

Strike: "For" on line 24 through "interest." on line 25

14. Page 13, line 17.

Following: "A CLAIM"

Insert: "that was placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, for which there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, but that was not in the physical possession of the department on or before April 30, 1982, and for that reason is in jeopardy of or has been ruled"

15. Page 13, line 25 through page 14, line 1.

Strike: "For" on page 13, line 25 through "interest." on page 14, line 1

16. Page 18, lines 11 through 20.

Strike: "any" on line 11 through "85-2-221" on line 20

Insert: "late claims have been reinstated in the general adjudication process"

17. Page 19, lines 12 and 13.

Strike: "caused" on line 12 through "(1)" on line 13

Insert: "for which a late claim was filed"

18. Page 19, line 17 through page 20, line 7.

Strike: "a person" on page 19, line 17 through "those" on page 20, line 7

Insert: "late"

Strike: "then"

19. Page 20, line 9.

Strike: "then"

20. Page 20, line 25.

Following: "RIGHT"

Insert: "physically"

21. Page 21, line 10.

Following: "RIGHT"

Insert: "physically"

22. Page 22, line 9 through page 23, line 5.

14-43
310
Strike: subsections (D) and (E) in their entirety

Renumber: subsequent subsection

23. Page 23, line 6.

Strike: "MAY"

Insert: "shall"

24. Page 23, line 7.

Following: "A CLAIM"

Insert: "physically"

25. Page 23, lines 9 through 16.

Strike: "IF" on line 9 through "85-2-226" on line 16

26. Page 23, lines 17 through 21.

Strike: subsection (4) in its entirety

27. Page 23, line 22 through page 28, line 19.

Strike: sections 5, 6, and 7 in their entirety

Renumber: subsequent sections

28. Page 29, line 3.

Following: "basins"

Strike: "for"

Insert: "in"

Following: "which"

Insert: "late"

Strike: "have been filed"

Insert: "must be incorporated"

29. Page 31, line 22 through page 39, line 2.

Strike: section 9 in its entirety

Renumber: subsequent sections

Amendments to Senate Bill No. 310

Reference Copy

Requested by Rep. Bob Bachini

For the Free Conference Committee

Prepared by Robert Person

April 5, 1993

"Postmark" Filings Only -- Not Subordinated

1. Title, line 18.

Following: "FORFEITURE OF"

Insert: "CERTAIN"

2. Title, lines 20 through 24.

Strike: "PROVIDING" on line 20 through "REMISSION;" on line 24

3. Title, page 2, line 1.

Strike: "85-2-225, 85-2-226, 85-2-234,"

Insert: "AND"

Following: "85-2-237,"

Strike: "AND"

4. Title, page 2, line 2.

Strike: "85-2-306,"

5. Page 7, line 4.

Following: "PROVIDE"

Insert: "certain"

6. Page 7, line 14.

Following: "WHO"

Insert: "have been recognized as having"

7. Page 7, line 25.

Strike: ": AND"

Insert: ": "

8. Page 8, lines 1 through 12.

Strike: lines 1 through 12 in their entirety

9. Page 8, line 15.

Strike: "85-2-225, 85-2-226, 85-2-234,"

Insert: "and"

10. Page 8, line 16.

Strike: "AND 85-2-306,"

11. Page 8, line 17.

Strike: "ACCEPTANCE OF ADDITIONAL STATEMENTS OF CLAIM"

Insert: "adjudication of certain additional claims"

12. Page 10, line 16.

Following: "A CLAIM"

Insert: "that was placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, for which there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, but that was not in the physical possession of the department on or before April 30, 1982, and for that reason is in jeopardy of or has been ruled"

13. Page 10, lines 24 and 25.

Strike: "For" on line 24 through "interest." on line 25

14. Page 13, line 17.

Following: "A CLAIM"

Insert: "that was placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, for which there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, but that was not in the physical possession of the department on or before April 30, 1982, and for that reason is in jeopardy of or has been ruled"

15. Page 13, line 25 through page 14, line 1.

Strike: "For" on page 13, line 25 through "interest." on page 14, line 1

16. Page 18, lines 11 through 20.

Strike: "any" on line 11 through "85-2-221" on line 20

Insert: "late claims have been reinstated in the general adjudication process"

17. Page 19, lines 12 and 13.

Strike: "caused" on line 12 through "(1)" on line 13

Insert: "for which a late claim was filed"

18. Page 19, line 17 through page 20, line 7.

Strike: "a person" on page 19, line 17 through "those" on page 20, line 7

Insert: "late"

Strike: "then"

19. Page 20, line 9.

Strike: "then"

20. Page 20, line 25.

Following: "RIGHT"

Insert: "physically"

21. Page 21, line 10.

Following: "RIGHT"

Insert: "physically"

22. Page 22, line 9 through page 23, line 16.
Strike: subsections (D) through (F) in their entirety

23. Page 23, lines 17 through 21.
Strike: subsection (4) in its entirety

24. Page 23, line 22 through page 28, line 19.
Strike: sections 5, 6, and 7 in their entirety
Renumber: subsequent sections

25. Page 29, line 3.
Following: "basins"
Strike: "for"
Insert: "in"
Following: "which"
Insert: "late"
Strike: "have been filed"
Insert: "must be incorporated"

26. Page 31, line 22 through page 39, line 2.
Strike: section 9 in its entirety
Renumber: subsequent sections

Amendments to Senate Bill No. 310
Reference Copy

Requested by Rep. Bob Bachini
For the Free Conference Committee

Prepared by Robert Person
April 5, 1993

"Postmark" Filings Only -- Subordination Conditional

1. Title, line 18.
Following: "FORFEITURE OF"
Insert: "CERTAIN"
2. Title, lines 20 through 24.
Strike: "PROVIDING" on line 20 through "REMISSION;" on line 24
3. Title, page 2, line 1.
Strike: "85-2-225, 85-2-226, 85-2-234,"
Insert: "AND"
Following: "85-2-237,"
Strike: "AND"
4. Title, page 2, line 2.
Strike: "85-2-306,"
5. Page 7, line 4.
Following: "PROVIDE"
Insert: "certain"
6. Page 7, line 14.
Following: "WHO"
Insert: "have been recognized as having"
7. Page 7, line 25.
Strike: ": AND"
Insert: ": "
8. Page 8, lines 1 through 12.
Strike: lines 1 through 12 in their entirety
9. Page 8, line 15.
Strike: "85-2-225, 85-2-226, 85-2-234,"
Insert: "and"
10. Page 8, line 16.
Strike: "AND 85-2-306,"
11. Page 8, line 17.
Strike: "ACCEPTANCE OF ADDITIONAL STATEMENTS OF CLAIM"
Insert: "adjudication of certain additional claims"
12. Page 10, line 16.

Following: "A CLAIM"

Insert: "that was placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, for which there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, but that was not in the physical possession of the department on or before April 30, 1982, and for that reason is in jeopardy of or has been ruled"

13. Page 10, lines 24 and 25.

Strike: "For" on line 24 through "interest." on line 25

14. Page 13, line 17.

Following: "A CLAIM"

Insert: "that was placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, for which there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, but that was not in the physical possession of the department on or before April 30, 1982, and for that reason is in jeopardy of or has been ruled"

15. Page 13, line 25 through page 14, line 1.

Strike: "For" on page 13, line 25 through "interest." on page 14, line 1

16. Page 18, lines 11 through 20.

Strike: "any" on line 11 through "85-2-221" on line 20

Insert: "late claims have been reinstated in the general adjudication process"

17. Page 19, lines 12 and 13.

Strike: "caused" on line 12 through "(1)" on line 13

Insert: "for which a late claim was filed"

18. Page 19, line 17 through page 20, line 7.

Strike: "a person" on page 19, line 17 through "those" on page 20, line 7

Insert: "late"

Strike: "then"

19. Page 20, line 9.

Strike: "then"

20. Page 20, line 25.

Following: "RIGHT"

Insert: "physically"

21. Page 21, line 10.

Following: "RIGHT"

Insert: "physically"

22. Page 22, line 9 through page 23, line 5.
Strike: subsections (D) and (E) in their entirety
Renumber: subsequent subsection

23. Page 23, line 7.
Following: "A CLAIM"
Insert: "physically"

24. Page 23, lines 9 through 16.
Strike: "IF" on line 9 through "85-2-226" on line 16

25. Page 23, lines 17 through 21.
Strike: subsection (4) in its entirety

26. Page 23, line 22 through page 28, line 19.
Strike: sections 5, 6, and 7 in their entirety
Renumber: subsequent sections

27. Page 29, line 3.
Following: "basins"
Strike: "for"
Insert: "in"
Following: "which"
Insert: "late"
Strike: "have been filed"
Insert: "must be incorporated"

28. Page 31, line 22 through page 39, line 2.
Strike: section 9 in its entirety
Renumber: subsequent sections

Amendments to Senate Bill No. 310
Reference Copy

Requested by Sen. Rae
For the Free Conference Committee

Prepared by Robert Person
April 14, 1993

1. Page 21.

Following: line 14

Insert: "(d) If an objection is filed to a late claim, the
person filing the late claim or that person's successor in
interest must prove the existence of the late claim by clear
and convincing evidence."

Renumber: subsequent subsections

Amendments to Senate Bill No. 310
Reference Copy

Requested by Rep. S. Anderson
For the Free Conference Committee

Prepared by Robert Person
April 15, 1993

Adding to and consolidating late claims procedural matters

1. Page 20, line 4 through page 23, line 16.

Strike: "Within" on page 20, line 4 through "that," on page 20, line 10 and subsections (a) through (f) in their entirety

2. Page 25.

Following: line 11

Insert: "NEW SECTION. Section 7. Procedure relating to late claims. (1) Within 30 days of receipt, the department shall forward each late claim to the water judge who shall make an initial determination whether good cause exists to allow remission of forfeiture. The finding of good cause must be based on the following criteria:

(a) sufficient evidence tending to show that the claimed right existed on July 1, 1973;

(b) evidence, by affidavit or otherwise that the claim was filed within a reasonable time after discovery of the non-filing;

(c) evidence, by affidavit or otherwise, that remission of forfeiture will not delay or otherwise impact litigation pending in courts other than the water court or that the parties to the litigation consent to the remission of forfeiture; and

(d) such other evidence as the court considers relevant.

(2) In making the determination of good cause, the court may request additional information from the late claimant and may, if necessary, issue notice to other interested parties and hold a show cause hearing on the issue of good cause. The water judge may award reasonable attorney fees and costs to the prevailing party in any show cause hearing.

(3) If the judge finds good cause to allow remission of forfeiture, the late claim is then subject to adjudication as any other claim of existing right. The claimant or the claimant's successor in interest is subject to all rights and obligations of any other party, except that:

(a) a late claim must be incorporated into the adjudication, subject to all proceedings that have taken place prior to the inclusion of the late claim in the adjudication;

(b) the person asserting a late claim may request that a decree previously entered be reopened or may object to

matters previously determined on the merits by the water court only to the extent that the request or objection is otherwise authorized by law and is based on a claim of water right filed on or before April 30, 1982, unless the person asserting a late claim also has filed a claim on or before April 30, 1982;

(c) a person asserting a late claim does not have the right or standing to object to any water rights compact reached in accordance with part 7 of this chapter that is ratified by the legislature prior to [the effective date of this act] except to the extent that right or standing to object exists based on a claim of water right filed on or before April 30, 1982, or to claim protection for the right represented in the late claim under any provision of such a compact that subordinates the use of a water right recognized in the compact to a right recognized under state law;

(d) if the water judge, following objection by another person asserting a claim, finds that a right represented in a late claim did not exist on July 1, 1973, or that the right represented by the late claim should be subordinated to another right under subsection (3)(f) or that the right represented in the late claim was the subject of a prior order or decree by the water judge, the water judge shall award costs and reasonable attorney fees to the person or persons filing the objection;

(e) a person who has a late claim may be found liable for costs and damages incurred by another person who proves by a preponderance of the evidence that the costs and damages were incurred as a result of actions undertaken in reasonable reliance upon a late claim and the conclusive presumption of abandonment provided in 85-2-226. A claim for damages and costs under this subsection (e) must be filed in a court of general jurisdiction on or before July 1, 1998. The court of general jurisdiction in which the action is commenced may, upon motion, certify the case to the water court for subordination of the right asserted in the late claim if subordination will cure the alleged damage.

(f) the water judge may subordinate an existing right asserted in a late claim to a claim filed on or before April 30, 1982, to a reserved water right compact negotiated or to a permit issued pursuant to this chapter if and to the extent that an objection is filed under this part by a person entitled to subordination by July 1, 1998, and the objector proves by a preponderance of the evidence that the objector has reasonably relied to the objector's detriment upon the failure to file the existing right on or before April 30, 1982, and the conclusive presumption of abandonment provided in 85-2-226."

Renumber: subsequent sections

3. Page 39.

Following: line 7

Insert: "NEW SECTION. Section 10. {standard} Codification

instruction. [Section 7] is intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to [section 7]."

4. Page 39, line 19.

Strike: "85-2-221(3)(C), AS AMENDED BY [THIS ACT]"

Insert: "[section 7(3)(c)]"

Amendments to Senate Bill No. 310
Reference Copy

Requested by Sen. Rae
For the Free Conference Committee

Prepared by Robert Person
April 16, 1993

1. Page 23, lines 9 and 10.

Following: "IF"

Strike: "AND TO THE EXTENT THAT"

2. Page 23, line 11.

Following: "SUBORDINATION"

Strike: "BY"

Insert: "on or before"

3. Page 23, line 12.

Strike: "the objector proves by a preponderance of evidence"

Insert: "judge finds"

4. Page 23, line 16.

Following: "85-2-226"

Insert: ", or that the right filed in the late claim was not put
to beneficial use during the years between 1982 and the date
of filing when water was available for use and no reasonable
grounds for non-use exist"

Amendments to Senate Bill No. 310
Reference Copy

Requested by Sen. Grosfield
For the Free Conference Committee

Prepared by Robert Person
April 19, 1993

1. Title, line 18.
Following: "FOR THE"
Insert: "CONDITIONAL"
Strike: "THE FORFEITURE OF"
Insert: "CERTAIN"

2. Title, line 19.
Following: "WATER"
Insert: "DETERMINED BY THE MONTANA SUPREME COURT TO HAVE BEEN
FORFEITED"

3. Title, line 21.
Following: "OF"
Insert: "LATE"

4. Title, line 22.
Following: "FILE"
Insert: "LATE"

5. Title, line 25.
Following: "SUCH"
Insert: "LATE"

6. Page 7, line 5.
Strike: "ASSERT"
Insert: "file"

7. Page 7, line 14.
Following: "WHO"
Insert: "have been recognized as having"

8. Page 8, line 17.
Strike: "ADDITIONAL STATEMENTS OF CLAIM"
Insert: "late claims"
Strike: "EXISTING"
Insert: "the use of"

9. Page 8, line 18.
Strike: "RIGHTS"

10. Page 10, line 16.
Following: "A CLAIM"
Insert: "to an existing right"

11. Page 10, lines 24 and 25.

Strike: "For" on line 24 through "interest." on line 25

12. Page 13, line 17.

Following: "A CLAIM"

Insert: "to an existing right"

13. Page 13, line 25 through page 14, line 1.

Strike: "For" on page 13, line 25 through "interest." on page 14,
line 1

14. Page 18, line 2.

Following: "state"

Insert: "and to be maintained in that location through December
31, 1993"

15. Page 18, line 11.

Strike: "person who failed to file a"

16. Page 18, line 12.

Following: "right"

Insert: "not filed with the department"

17. Page 18, lines 12 and 13.

Strike: "file such claim"

Insert: "be filed"

~~18. Page 18, line 15.~~

~~Strike: "July 1."~~

~~Insert: "December 31, 1993,"~~

~~Strike: "1996"~~

19. Page 18, line 17.

Strike: "AS" through "COURT."

20. Page 18, line 22.

Following: "right"

Insert: "-- filing late claim"

21. Page 19, line 17.

Strike: "person who failed to file a"

22. Page 19, line 18.

Following: "right"

Insert: "not filed with the department"

23. Page 19, line 19.

Strike: "file"

Insert: "be filed"

24. Page 19, lines 19 and 20.

Strike: "a claim of an existing water right"

25. Page 19, line 22.

Strike: "a person who may have filed"

Insert: "the filing of a late claim in addition to"

26. Page 19, line 23.

Following: "right"

Insert: "filed"

27. Page 19, lines 23 and 24.

Strike: "from filing an additional claim under this section"

28. Page 20, line 1.

Following: "claim"

Insert: "and is not an abandoned right"

29. Page 20, lines 4 through 7.

Strike: "Within" on line 4 through "use" on line 7

Insert: "The"

30. Page 20, line 19.

Strike: "INCLUSION OF THE LATE CLAIM IN THE ADJUDICATION"

Insert: "date of filing"

31. Page 20, line 20.

Strike: "ASSERTING"

Insert: "filing"

32. Page 20, line 25.

Following: "1982"

Strike: the remainder of subsection (b) in its entirety

33. Page 21, line 5.

Strike: "ASSERTING"

Insert: "filing"

34. Page 22, lines 9 through 13.

Following: "OBJECTION"

Insert: "under 85-2-233, finds"

Strike: "BY" on line 9 through "OR" on line 13

35. Page 22, line 22.

Strike: "A LATE CLAIM AND"

36. Page 22, line 25 through page 23, line 1.

Strike: "ON OR BEFORE JULY 1, 1998"

37. Page 23, line 2.

Following: "MOTION,"

Insert: "in addition to awarding costs and damages,"

38. Page 23, line 4.

Following: "cure"

Insert: "or partially cure"

39. Page 23, lines 6 through 16.

Strike: subsection (f) in its entirety

Insert: "(f) A late claim is subordinate to all federal and Indian reserved water rights established by compact or decree under this chapter.

(g) A late claim that was either not placed in the United States mail and postmarked on or before April 30, 1982, or, if there is ^{no} evidence of the date of mailing, for which there is ~~is~~ evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, is, in addition, subordinate to:

(i) all timely filed claims finally adjudicated to be valid; and

(ii) a permit or reservation of water issued under this chapter if and to the extent that the person holding the permit or reservation files an objection under this part and proves that the person holding the permit or reservation reasonably relied to the detriment of the person holding the permit or reservation upon the failure of the claimant to file a claim on or before April 30, 1982."

40. Page 24, line 18.

Strike: "\$100"

Insert: "\$1,000"

41. Page 24, line 20.

Following: "ACCOUNT"

Insert: "for the examination of late claims by the department and for the publication of notices by the department as required under 85-2-213(2)"

42. Page 24, lines 22 and 23.

Strike: "AN" on line 22 through "CLAIM" on line 23

Insert: "against the late claimant all reasonable administrative costs and expenses that may be incurred by the court due to the filing of the late claim and the consideration of the objection"

43. Page 24, line 23.

Strike: "FEE"

Insert: "assessment"

44. Page 25, line 5.

Following: "decree"

Insert: ", if applicable,"

Amendments to Senate Bill No. 310
Reference Copy

For the Free Conference Committee

Prepared by Robert Person
April 19, 1993

1. Page 22, line 18 through page 23, line 16.

Strike: subsections (e) and (f) in their entirety

Insert: "(e) A late claim is subordinate to all federal and Indian reserved water rights established by compact or decree under this chapter.

(f) A late claim that was either not placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, for which there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, is, in addition, subordinate to:

(i) all timely filed claims finally adjudicated to be valid; and

(ii) a permit or reservation of water issued under this chapter if and to the extent that the person holding the permit or reservation files an objection under this part and proves that the person holding the permit or reservation reasonably relied to the detriment of the person holding the permit or reservation upon the failure of the claimant to file a claim on or before April 30, 1982."

2. Page 39.

Following: line 13

Insert: "(2) It is the intent of the legislature that each part of [this act] is essentially dependent upon [section 4], which amends 85-2-221, and that if one part of [section 4], except subsection (3)(f)(ii), is held unconstitutional or invalid, all other parts of [this act] are invalid."

3. Page 39, lines 14 through 20.

Strike: section 11 in its entirety

Renumber: subsequent section

Amendments to Senate Bill No. 310
Reference Copy

Requested by Sen. Grosfield

Prepared by Michael S. Kakuk
April 19, 1993

"Late claim" Interim Study - Water Policy Committee

1. Title, line 25.

Following: "CLAIMS;"

Insert: "REQUESTING THE WATER POLICY COMMITTEE, IN COORDINATION WITH CERTAIN STATE AGENCIES, TO CONDUCT AN INTERIM STUDY REGARDING LATE CLAIM ISSUES;"

2. Page 8.

Following: line 18.

Insert: "Additionally, the legislature requests the water policy committee, in coordination with the department of justice, the department of natural resources and conservation, and the reserved water rights compact commission, to conduct an interim study regarding certain late claim issues."

3. Page 39.

Following: line 7

Insert: " NEW SECTION. Section 10. Late claim interim study -- water policy committee. (1) The water policy committee, in coordination with the department of justice, the department of natural resources and conservation, and the reserved water rights compact commission, is requested to conduct an interim study analyzing the need for and desirability and impacts of allowing the remission of forfeited water rights in addition to the remissions authorized under the provisions of [this act]. The study must analyze the impacts of additional forfeiture remission on:

(a) the general stream adjudication process, including but not limited to the issues of adequacy and Montana's and the federal government's concurrent water rights adjudication jurisdiction;

(b) the federal government and Indian tribes regarding existing and future negotiated water rights compacts, including but not limited to the issues of equal protection;

(c) timely claimants' water use;

(d) timely claimants' legal rights, including but not limited to constitutional requirements regarding the taking of property;

(e) the potential reduction in agricultural production resulting from not granting additional forfeiture remissions and the associated social and economic impacts;

(f) the issue of fairness to both late and timely claimants; and

(g) the potential increased costs to the state and to late and timely claimants.

(2) The study must include an analysis of the potential for identifying individuals or classes of individuals whose additional forfeiture remission could be authorized in a manner that would have an acceptable impact on those issues identified under subsection (1). The classes of late claimants include but are not limited to previously decreed water rights holders and classes established according to filing date.

(3) The study must be completed in consultation with other relevant state and federal agencies, relevant groups and organizations, and other interested and affected citizens.

(4) The water policy committee shall report the results of the study to the 54th legislature by October 1, 1994. The report must include any legislative or other policy options recommended by the water policy committee."

Renumber: subsequent sections

(F) A late claim that was ~~either~~ not placed in the US Mail and postmarked on or before April 30, 1982

(F) Unless a late claim ~~was~~ ^{was} either placed in the US mail postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, was executed on or before April 30, 1982 and was actually received by the department on or before May 7, 1982, the late claim is also subordinate to

(i)

(ii)

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 310

Call to Order: By Steve Doherty, Chair, on April 20, 1993, at
4:25 p.m.

ROLL CALL

Members Present:

Senator Steve Doherty, Chair (D)
Senator Lorents Grosfield (R)
Senator Jack "Doc" Rea (D)
Representative Shiell Anderson (R)
Representative Bob Bachini (D)
Representative Ray Brandewie (R)

Members Excused: None.

Members Absent: None.

Staff Present: Kristie Wolter, Committee Secretary
Robert Person, Legislative Council

Discussion:

Senator Doherty stated there were amendments distributed (Exhibit #1). He stated the Committee would review the amendments before them for any problems and then they would address any new amendments.

Representative Bachini asked Mr. Person to review the amendments before the Committee.

Mr. Person stated the amendments represented everything the Committee had adopted on April 19, 1993. He stated there was a change on amendment #36. He stated the amendments refer to the "subordination of claim" and he asked the language be changed to express the fact that it is a water right which is being represented in the claim. Mr. Person stated the use of the word "finally" in amendment #36 was going to be addressed by Chris Tweeten from the Attorney General's (AG) office.

Mr. Tweeten stated the change in amendment #36 was important for understanding of how subordination would work in the interim before the issuance of a final decree. He stated the current language reads "subordination to all timely filed claims finally adjudicated to be valid" and the AG's office requested the words "finally adjudicated to be valid" be deleted and the word "valid"

be inserted between "all" and "timely". He stated the new language would read "all valid, timely, claims". Mr. Tweeten stated if the claims appear in a temporary preliminary decree, the claims are prima facie evidence and a final decree must be presented before the subordination can be applied.

Senator Doherty asked Mr. Tweeten about amendment #36 and that the amendment was not addressing subordination to a claim, but subordination of a water right. Mr. Tweeten stated the AG agreed with the change and that the statement was accurate. He stated the language provided by Mr. Person was sufficient and thorough. Mr. Tweeten gave an example of how the amendment would effect the language in SB 310. He stated the change should be made consistent through SB 310.

Motion/Vote:

Representative Brandewie moved SB 310 BE AMENDED (Amendment #36, Exhibit #1). The motion carried UNANIMOUSLY.

Discussion:

Senator Doherty stated the next amendment to be addressed deals with the "finally adjudicated to be valid" (p. 4).

Janice Rehberg asked for clarification of the law that it would subordinate them to interim preliminary decrees. Mr. Tweeten stated the amendment would allow the subordination of late claims before the issuance of final decrees. He stated the subordination is for interim purposes if a dispute arises. He stated the subordination would only apply if the claim is valid. Mr. Tweeten stated the claims are treated as a claim with prima facie effect until such time as somebody proves otherwise.

Ms. Rehberg stated her concern was with subordination. She stated the determination made in the preliminary stages is not necessarily what is going to end up on the final decree. She stated the subordination may be to a water right which is inaccurate. She stated the temporary preliminary decree is often times different than the preliminary decree. She stated a lot of the timely filed claims are erroneous.

Senator Grosfield asked if (i) would read "all valid, timely filed claims and...". Mr. Tweeten stated that was correct. Senator Grosfield asked if a valid, timely filed claim could be held as prima facie evidence and if the changes on the claim throughout the process would be held as prima facie evidence. Don MacIntyre, Department of Natural Resources (DNR) stated the claim is prima facie evidence of the validity of the claim. He stated the water court has the authority to "pare down" the rights in a temporary preliminary decree. He stated the amendment before the Committee is intended to make the water right subordinate, but the subordination clause is unenforceable until the final decree is entered.

Motion:

Senator Grosfield moved SB 310 be AMENDED (Change (i) to say "all valid, timely filed claims; and").

Discussion:

Ms. Rehberg stated there was still a question as to whether a person would have to approach the court on the rights between two parties. She stated the law could be interpreted to say once the temporary preliminary decree is issued, then the rights are in that decree because they are prima facie evidence. Ms. Rehberg stated the rights of late claims are subordinated to erroneous claims in a decree. She stated there needs to be a way to handle interim disputes, but this was not the method which would do the best job.

Senator Grosfield asked Mr. MacIntyre if there had been past legislation which dealt with the enforceability of temporary, preliminary decrees. Mr. MacIntyre stated there had been legislation which enforced the preliminary decree after it had been through the objection process. Senator Grosfield asked Mr. MacIntyre if all valid, timely filed claims would not be enforceable until a temporary preliminary decree has gone through the objection phase. Mr. MacIntyre stated the rule is a general rule and there were exceptions. He stated the claim has to be a valid, timely filed claim.

Ms. Rehberg stated "validity" needed to be defined. She stated the process needed to be defined also.

Representative Brandewie stated if people were not subordinated to timely filed claims, then nothing would protect the people who have filed a timely filed claim. He stated (i) should read "all timely filed claims; and". He stated the term "valid" needed to be defined.

Senator Rea stated that until the final decrees are filed, there is no indication of what is valid.

Mr. Tweeten stated the deletion of the word "valid" would imply a person is subordinated to a claim whether it is valid or not.

Vote:

The motion CARRIED 5 to 1 with Senator Rea voting NO.

Discussion:

Senator Grosfield asked Mr. Person about amendment #42. Mr. Person stated the change in the amendment was from December 31, 1993 to July 1, 1999. He stated the reason for the change was because it related to another section of law which addressed the filing of rights. Mr. Person stated another amendment which had

been changed was amendment #15. He stated amendment #15 addressed the filing location of the Court House and the DNRC offices and had to be changed to coordinate with the filing period deadline.

Motion/Vote:

Senator Grosfield moved SB 310 be AMENDED (Amendment #15). The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Grosfield moved SB 310 be AMENDED (Amendment #42). The motion CARRIED UNANIMOUSLY.

Motion:

Representative Anderson moved SB 310 be AMENDED (SB031019.ARP, Exhibit #2).

Discussion:

Mr. MacIntyre stated the amendments require the notices be maintained in locations. He stated the amendment would not create affirmative duty for the Department to ensure the posting of the notices. He stated the notices will just be made available for posting and once it is posted it should remain posted throughout the period of time. He stated the removal of the posted notice is not regarded as failure of notice. He stated the purpose of the amendment was to provide insurance that the notice will be posted.

John Blomquist, Plaintiff's Attorney for water users in the Clark Fork drainage basin, stated the amendment is to protect his clients. He stated his clients are charging the defendant with the use of water without a valid water right. He stated the defendant does not have an existing water right claim. He stated the amendment would not allow the new law to affect current judicial proceedings on the action. He stated late water right claims are going to be allowed under SB 310. Mr. Blomquist stated if the defendants were allowed to file a late water right claim, the case would be delayed for an unnecessary amount of time. He stated he had discussed the amendment with the AG and various members of the Committee and had no opposition.

Mr. Shanahan, defendant's attorney in the above stated case stated he was uncertain if the amendment would fall under the severability clause. He stated his client had diverted water into a pond and there was a damages claim regarding water rights. He stated the new amendments would allow for adjudication of the validity of the water rights in the pending action. He stated the proposed amendment would create a special piece of legislation which would deny one person any benefits from the law.

Mr. Tweeten stated his Department had no position on the situation or the legislation. He stated the severability clause would allow for the legislation to completely fail if Mr. Blomquist were to win the legal battle and the legislation to be enforced if Mr. Shanahan were to win the legal battle. He stated the only thing which will be removed will be the severance clause. Mr. Tweeten stated the amendment addresses proceedings which were begun before the effective date of the act. He stated the language should be changed to "passage and approval" rather than the effective date. He stated the reason for the "passage and approval" language would be to avoid a rush of people filing suits before the effective date.

Mr. Blomquist stated "passage and approval" was included in his amendment.

Mr. Shanahan stated his clients were claiming water rights by "use claim" and they were not going to claim the water rights after the legislation passed.

Representative Brandewie stated he would like the Committee to know the amendment was to include "passage and approval".

Senator Doherty stated there should be a severability clause inserted with the amendment.

Mr. Person stated the severability clause already introduced would cover the amendment.

Senator Rea stated he had an amendment which would address the issue.

Senator Grosfield stated the severability language was plain and non-severability only covered Section 4. Senator Grosfield pointed out the amendment was numbered Section 1 and should be numbered Section 10.

Mr. Person stated the new section would be numbered section 11 because the new claim study was the new section 10.

Representative Anderson stated the amendment was good because the parties to the action were addressing the law as it stood at the commencement of the action.

Vote:

The motion CARRIED UNANIMOUSLY.

Discussion:

Senator Rea provided an amendment (Exhibit #3) and reviewed it with the Committee.

Motion:

Senator Rea moved SB 310 be AMENDED (Exhibit #3).

Discussion:

Senator Grosfield stated the amendment should include the word "late" before the word "claims".

Ms. Rehberg stated the intention of the amendment was to protect the state land claims which have not been filed and allow the board to review late claims by the state and the claims' effects on the revenue.

Senator Grosfield stated there was a timing problem because the deadline is July 1, 1996 and the study has to be done by December 31, 1995. He stated the Board would not have the ability to review every claim in that time.

Ms. Rehberg stated the Board would not analyze each one specifically, but would make an overview of the state claims.

Senator Grosfield asked what trust responsibilities were being referred to in section (i). Ms. Rehberg stated the school trust would be the primary trust, but there may be other trust responsibilities which may be included.

Representative Brandewie stated the Board will not have the time to review all of the claims because they already have such a heavy work load. Representative Brandewie stated the Water Policy Committee (WPC) has to figure out if the late claim is fair before they determine all of the implications.

Representative Anderson stated the WPC will study the claims and the amendment would give them guidelines to apply to their studies.

Representative Brandewie stated the legislature was giving the WPC too much to do. He stated the people with the problems should have to make the studies and present the problems to the WPC.

Representative Bachini stated the municipalities and the counties would work with the WPC in their duties so the burden would not be that heavy.

Senator Rea stated the information is available and the amendment would provide for a comprehensive study and provide the information to a large group of people.

Senator Doherty asked Senator Rea if he would accept a friendly amendment of the word "late" before the word "claims". Ms. Rehberg stated the amendment would be better if it read "from the State's failure to file claims to existing water rights on or

before April 30, 1982." Senator Rea conceded.

Vote:

The motion CARRIED UNANIMOUSLY.

Discussion:

Senator Rea offered a substitute amendment to amendment #36 (Exhibit #4) and reviewed the amendment with the Committee.

Senator Grosfield asked Senator Rea if the amendment addressed existing compacts versus future compacts. Senator Rea stated that was correct.

Motion:

Senator Rea moved SB 310 be AMENDED (Exhibit #4).

Discussion:

Senator Grosfield stated he opposed the amendment because the Senate had passed the National Park Service Act and the compact would be effective on approval by three different departments. He stated the effective date is the date on which the last person signs the compact. He stated the effective date of the Act would probably fall after the effective date of SB 310. He stated the Act has specific language which states it will not be affected by late claims. Senator Grosfield stated there was also an issue of other compacts which would be affected by the amendment offered by Senator Rea. He stated there could be a problem with trying not to subordinate future claims with other federal agencies.

Representative Brandewie stated he agreed with Senator Grosfield. He stated it was critical to keep the adjudication process within Montana and not take the chance of losing the process to the Federal government. He stated he could not support the amendment raised by Senator Rea.

Senator Rea stated he was trying to represent the citizens of Montana.

Vote:

The motion FAILED 2 to 4 with Senator Rea and Representative Anderson voting YES and the remaining members of the Committee voting NO.

Discussion:

Senator Rea presented the Committee with amendments to section f of amendment #36 (Exhibit #5). He stated the amendment would extend the deadline to "a reasonable period of time following April 30, 1982." He stated there were cases where filings were

sent and not received by April 30, 1982. He stated a water judge should be able to decide if it is reasonable time and consider the circumstances why the filings were not in to the court.

Representative Brandewie stated the "reasonable length of time" would be one day from anywhere in Montana. He stated May 7 is seven days after the deadline of April 30. He stated 7 days is a definitive and reasonable time period.

Mr. Tweeten stated the intention of the section was to protect people whose filings were postmarked on or before April 30, 1982.

Mr. Person stated the proposal was to state the section positively.

Senator Grosfield stated May 7 is the exact date and should not be changed. He stated the seven day allowance was for out of state mailings.

Representative Bachini asked if the Committee was going to agree on a date or specified time.

Representative Brandewie proposed an amendment which would make the deadline May 7 if it was mailed within the state and May 14 if it was mailed from out of the state.

Mr. Tweeten stated the amendment would be an appropriate subject to be included in the study.

Senator Grosfield stated he felt the study was a good idea.

Motion/Vote:

Senator Rea moved SB 310 be AMENDED (Exhibit #5). The motion FAILED with Senator Rea voting YES and the remaining members of the Committee voting NO.

Discussion:

Senator Grosfield stated it was very important for the Board to address the issue raised in the final amendment proposed by Senator Rea. He stated the compact passed by the Committee protected existing and future rights.

Representative Anderson stated the final amendment would have retroacted SB 310 and put it back to where it had begun. He stated SB 310 allows for the protection of the people through the compact agreements.

Motion/Vote:

Representative Brandewie moved to ADOPT the AMENDMENTS and to PREPARE THE FREE CONFERENCE COMMITTEE REPORT. The motion CARRIED on Roll Call Vote.

ADJOURNMENT

Adjournment: 5:50 p.m.

Steve Doherty

SENATOR STEVE DOHERTY Chair

Kristie Wolter

KRISTIE WOLTER, Secretary

SD/klw

(FREE) CONFERENCE COMMITTEE

SENATE BILL

#

SB316

DATE 4.20.93

[illegible]

ROLL CALL VOTE

(FREE) CONFERENCE COMMITTEE

BILL NO.

JB 310

DATE _____

4/20/93

TIME

4:00

A.M. P.M.

NAME

YES

NO

[illegible]

K. WOLTER

SECRETARY

Sen Dorchester

CHAIR

MOTION:

Committee Report Be. Adopted

Free Conference Committee
on Senate Bill No. 310
Report No. 1, April 21, 1993

Page 1 of 17

Mr. President and Mr. Speaker:

We, your Free Conference Committee on Senate Bill No. 310, met and considered: Senate Bill No. 310 as amended. We recommend that Senate Bill No. 310 (reference copy - salmon) be amended as follows:

1. Title, line 18.

Following: "FOR THE"

Insert: "CONDITIONAL"

Strike: "THE FORFEITURE OF"

Insert: "CERTAIN"

2. Title, line 19.

Following: "WATER"

Insert: "DETERMINED BY THE MONTANA SUPREME COURT TO HAVE BEEN FORFEITED"

3. Title, line 21.

Following: "OF"

Insert: "LATE"

4. Title, line 22.

Following: "FILE"

Insert: "LATE"

5. Title, line 25.

Following: "SUCH"

Insert: "LATE"

Following: "CLAIMS;"

Insert: "DIRECTING THE WATER POLICY COMMITTEE, IN COORDINATION WITH CERTAIN STATE AGENCIES, TO CONDUCT AN INTERIM STUDY REGARDING LATE CLAIM ISSUES;"

6. Page 7, line 5.

Strike: "ASSERT"

Insert: "file"

7. Page 7, line 14.

Following: "WHO"

Insert: "have been recognized as having"

8. Page 8, line 17.

Strike: "ADDITIONAL STATEMENTS OF CLAIM"

Insert: "late claims"

Strike: "EXISTING"

Insert: "the use of"

ADOPT

REJECT

881414CC.Sma

9. Page 8, line 18.
Strike: "RIGHTS"

10. Page 8.
Following: line 18.
Insert: "Additionally, the legislature directs the water policy committee, in coordination with the department of justice, the department of natural resources and conservation, and the reserved water rights compact commission, to conduct an interim study regarding certain late claim issues."

11. Page 10, line 16.
Following: "A CLAIM"
Insert: "to an existing right"

12. Page 10, lines 24 and 25.
Strike: "For" on line 24 through "interest." on line 25

13. Page 13, line 17.
Following: "A CLAIM"
Insert: "to an existing right"

14. Page 13, line 25 through page 14, line 1.
Strike: "For" on page 13, line 25 through "interest." on page 14, line 1

15. Page 18, line 2.
Following: "state"
Insert: "and to be maintained in that location through July 1, 1996"

16. Page 18, line 11.
Strike: "person who failed to file a"

17. Page 18, line 12.
Following: "right"
Insert: "not filed with the department"

18. Page 18, lines 12 and 13.
Strike: "file such claim"
Insert: "be filed"

19. Page 18, line 17.
Strike: "AS" through "COURT,"

20. Page 18, line 22.
Following: "right"
Insert: "-- filing late claim"

21. Page 19, line 17.

Strike: "person who failed to file a"

22. Page 19, line 18.

Following: "right"

Insert: "not filed with the department"

23. Page 19, line 19.

Strike: "file"

Insert: "be filed"

24. Page 19, lines 19 and 20.

Strike: "a claim of an existing water right"

25. Page 19, line 22.

Strike: "a person who may have filed"

Insert: "the filing of a late claim in addition to"

26. Page 19, line 23.

Following: "right"

Insert: "filed"

27. Page 19, lines 23 and 24.

Strike: "from filing an additional claim under this section"

28. Page 20, line 1.

Following: "claim"

Insert: "and is not an abandoned right"

29. Page 20, lines 4 through 7.

Strike: "Within" on line 4 through "those" on line 7

Insert: "The"

30. Page 20, line 19.

Strike: "INCLUSION OF THE LATE CLAIM IN THE ADJUDICATION"

Insert: "date of filing"

31. Page 20, line 20.

Strike: "ASSERTING"

Insert: "filing"

32. Page 20, line 25 through page 21, line 2.

Following: "1982" on line 25

Strike: the remainder of subsection (b) through "1982" on page 21, line 2

33. Page 21, line 5.

Strike: "ASSERTING"

Insert: "filing"

34. Page 22, lines 9 through 13.

Strike: "BY" on line 9 through "OR" on line 13

Insert: "under 85-2-233, finds"

35. Page 22, line 15.

Following: "BY THE WATER JUDGE"

Insert: "or is otherwise without merit"

36. Page 22, line 18 through page 23, line 16.

Strike: subsections (e) and (f) in their entirety

Insert: "(e) a right represented in a late claim is subordinate to all federal and Indian reserved water rights established by compact or decree under this chapter;

(f) unless a late claim either was placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, the right represented in the claim is, in addition, subordinate to:

(i) rights represented in all valid, timely filed claims; and

(ii) rights represented in a permit or reservation of water issued under this chapter if and to the extent that the person holding the permit or reservation files an objection under this part and proves that the person holding the permit or reservation reasonably relied to the detriment of the person holding the permit or reservation upon the failure of the claimant to file a claim on or before April 30, 1982."

37. Page 24, line 18.

Strike: "\$100"

Insert: "\$150"

38. Page 24, line 20.

Following: "ACCOUNT"

Insert: "for the examination of late claims by the department and for the publication of notices by the department as required under 85-2-213(2)"

39. Page 24, line 21.

Strike: "IF" through "THE"

Insert: "The"

40. Page 24, lines 22 and 23.

Strike: "AN" on line 22 through "CLAIM" on line 23

Insert: "against the late claimant all reasonable administrative costs and expenses that may be incurred by the court due to

the filing of the late claim and the consideration of the objection"

41. Page 24, line 23.

Strike: "FEE"

Insert: "assessment"

42. Page 25, lines 4 through 6.

Strike: "the entry" on line 4 through "filed" on line 6

Insert: "a date to be established by the department by rule, but no later than July 1, 1999"

43. Page 39.

Following: line 7

Insert: "NEW SECTION. Section 10. Late claim interim study -- water policy committee. (1) The water policy committee, in coordination with the department of justice, the department of natural resources and conservation, and the reserved water rights compact commission, shall conduct an interim study analyzing the need for and desirability and impacts of allowing the remission of forfeited water rights in addition to the remissions authorized under the provisions of [this act]. The study must analyze the impacts of additional forfeiture remission on:

- (a) the general stream adjudication process, including but not limited to the issues of adequacy and Montana's and the federal government's concurrent water rights adjudication jurisdiction;
- (b) the federal government and Indian tribes regarding existing and future negotiated water rights compacts, including but not limited to the issues of equal protection;
- (c) timely claimants' water use;
- (d) timely claimants' legal rights, including but not limited to constitutional requirements regarding the taking of property;
- (e) the potential reduction in agricultural production resulting from not granting additional forfeiture remissions and the associated social and economic impacts;
- (f) the issue of fairness to both late and timely claimants;
- (g) the potential increased costs to the state and to late and timely claimants;
- (h) potential losses in revenue to the state resulting from the state's failure to file claims to existing water rights on or before April 30, 1982;

- (i) implications involving the state's trust responsibilities;
 - (j) potential litigation against the state by private parties; and
 - (k) impacts on municipal and county governments resulting from late claims.
- (2) The study must include an analysis of the potential for identifying individuals or classes of individuals whose additional forfeiture remission could be authorized in a manner that would have an acceptable impact on those issues identified under subsection (1). The classes of late claimants include but are not limited to previously decreed water rights holders and classes established according to filing date.
- (3) The study must be completed in consultation with other relevant state and federal agencies, relevant groups and organizations, and other interested and affected citizens.
- (4) The water policy committee shall report the results of the study to the 54th legislature by October 1, 1994. The report must include any legislative or other policy options recommended by the water policy committee."

NEW SECTION. Section 11. Saving clause. [This act] does not affect proceedings that were begun before [passage and approval of this act] in which relief for damages have been sought based upon the diversion, impoundment, or withdrawal of water without a water right established under state law.

Renumber: subsequent sections

44. Page 39, line 8.

Following: "SEVERABILITY"

Insert: "-- partial nonseverability"

Following: "."

Insert: "(1)"

45. Page 39.

Following: line 13

Insert: "(2) It is the intent of the legislature that each part of [this act] is essentially dependent upon [section 4], which amends 85-2-221, and that if one part of [section 4], except subsection (3)(f)(ii), is held unconstitutional or invalid, all other parts of [this act] are invalid."

46. Page 39, lines 14 through 20.

Strike: section 12 in its entirety

Renumber: subsequent section

And that this Free Conference Committee report be adopted.

For the Senate:

For the House:

Steve Doherty
Senator Doherty, Chair

Senator Doherty, Chair

Lorent's Grosfield
Senator Grosfield

Senator Grosfield

Senator Rea

Shiell W. Anderson
Representative S. Anderson, Chair

Representative S. Anderson, Chair

Bob Bachini
Representative Bachini

Representative Bachini

Ray Brandewie
Representative Brandewie

Representative Brandewie

Am. Coord.
Sec. of Senate

Amc Coord.

Sec. of Senate

Amendments to Senate Bill No. 310

Reference Copy

Requested by Free Conference Committee
For the Committee

Prepared by Robert Person
April 20, 1993

1. Title, line 18.

Following: "FOR THE"

Insert: "CONDITIONAL"

Strike: "THE FORFEITURE OF"

Insert: "CERTAIN"

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Following: "WATER"

Insert: "DETERMINED BY THE MONTANA SUPREME COURT TO HAVE BEEN
FORFEITED"

3. Title, line 21.

Following: "OF"

Insert: "LATE"

4. Title, line 22.

Following: "FILE"

Insert: "LATE"

5. Title, line 25.

Following: "SUCH"

Insert: "LATE"

Following: "CLAIMS;"

Insert: "DIRECTING THE WATER POLICY COMMITTEE, IN COORDINATION
WITH CERTAIN STATE AGENCIES, TO CONDUCT AN INTERIM STUDY
REGARDING LATE CLAIM ISSUES;"

6. Page 7, line 5.

Strike: "ASSERT"

Insert: "file"

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Following: "WHO"

Insert: "have been recognized as having"

8. Page 8, line 17.

Strike: "ADDITIONAL STATEMENTS OF CLAIM"

Insert: "late claims"

Strike: "EXISTING"

Insert: "the use of"

9. Page 8, line 18.

Strike: "RIGHTS"

10. Page 8.

Following: line 18.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 4/20/93

BILL NO. SB 310

Insert: "Additionally, the legislature directs the water policy committee, in coordination with the department of justice, the department of natural resources and conservation, and the reserved water rights compact commission, to conduct an interim study regarding certain late claim issues."

11. Page 10, line 16.
Following: "A CLAIM"
Insert: "to an existing right"

12. Page 10, lines 24 and 25.
Strike: "For" on line 24 through "interest." on line 25

13. Page 13, line 17.
Following: "A CLAIM"
Insert: "to an existing right"

14. Page 13, line 25 through page 14, line 1.
Strike: "For" on page 13, line 25 through "interest." on page 14, line 1

15. Page 18, line 2.
Following: "state"
Insert: "and to be maintained in that location through July 1, 1996"

16. Page 18, line 11.
Strike: "person who failed to file a"

17. Page 18, line 12.
Following: "right"
Insert: "not filed with the department"

18. Page 18, lines 12 and 13.
Strike: "file such claim"
Insert: "be filed"

19. Page 18, line 17.
Strike: "AS" through "COURT."

20. Page 18, line 22.
Following: "right"
Insert: "-- filing late claim"

21. Page 19, line 17.
Strike: "person who failed to file a"

22. Page 19, line 18.
Following: "right"
Insert: "not filed with the department"

23. Page 19, line 19.
Strike: "file"
Insert: "be filed"

24. Page 19, lines 19 and 20.
Strike: "a claim of an existin water right"
25. Page 19, line 22.
Strike: "a person who may have filed"
Insert: "the filing of a late claim in addition to"
26. Page 19, line 23.
Following: "right"
Insert: "filed"
27. Page 19, lines 23 and 24.
Strike: "from filing an additional claim under this section"
28. Page 20, line 1.
Following: "claim"
Insert: "and is not an abandoned right"
29. Page 20, lines 4 through 7.
Strike: "Within" on line 4 through "those" on line 7
Insert: "The"
30. Page 20, line 19.
Strike: "INCLUSION OF THE LATE CLAIM IN THE ADJUDICATION"
Insert: "date of filing"
31. Page 20, line 20.
Strike: "ASSERTING"
Insert: "filing"
32. Page 20, line 25 through page 21, line 2.
Following: "1982" on line 25
Strike: the remainder of subsection (b) through "1982" on page 21, line 2
33. Page 21, line 5.
Strike: "ASSERTING"
Insert: "filing"
34. Page 22, lines 9 through 13.
Strike: "BY" on line 9 through "OR" on line 13
Insert: "under 85-2-233, finds"
35. Page 22, line 15.
Following: "BY THE WATER JUDGE"
Insert: "or is otherwise without merit"
36. Page 22, line 18 through page 23, line 16.
Strike: subsections (e) and (f) in their entirety
Insert: "(e) a late claim is subordinate to all federal and Indian reserved water rights established by compact or decree under this chapter;
(f) unless a late claim either was placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing,

there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, the claim is, in addition, subordinate to:

(i) all timely filed claims finally adjudicated to be valid; and

(ii) a permit or reservation of water issued under this chapter if and to the extent that the person holding the permit or reservation files an objection under this part and proves that the person holding the permit or reservation reasonably relied to the detriment of the person holding the permit or reservation upon the failure of the claimant to file a claim on or before April 30, 1982."

37. Page 24, line 18.

Strike: "\$100"

Insert: "\$150"

38. Page 24, line 20.

Following: "ACCOUNT"

Insert: "for the examination of late claims by the department and for the publication of notices by the department as required under 85-2-213(2)"

39. Page 24, line 21.

Strike: "IF" through "THE"

Insert: "The"

40. Page 24, lines 22 and 23.

Strike: "AN" on line 22 through "CLAIM" on line 23

Insert: "against the late claimant all reasonable administrative costs and expenses that may be incurred by the court due to the filing of the late claim and the consideration of the objection"

41. Page 24, line 23.

Strike: "FEE"

Insert: "assessment"

42. Page 25, lines 4 through 6.

Strike: "the entry" on line 4 through "filed" on line 6

Insert: "a date to be established by the department by rule, but no later than July 1, 1999"

43. Page 39.

Following: line 7

Insert: "NEW SECTION. Section 10. Late claim interim study -- water policy committee. (1) The water policy committee, in coordination with the department of justice, the department of natural resources and conservation, and the reserved water rights compact commission, shall conduct an interim study analyzing the need for and desirability and impacts of allowing the remission of forfeited water rights in addition to the remissions authorized under the provisions of [this act]. The study must analyze the impacts of additional forfeiture remission on:

(a) the general stream adjudication process, including but not limited to the issues of adequacy and Montana's and the federal government's concurrent water rights adjudication jurisdiction;

(b) the federal government and Indian tribes regarding existing and future negotiated water rights compacts, including but not limited to the issues of equal protection;

(c) timely claimants' water use;

(d) timely claimants' legal rights, including but not limited to constitutional requirements regarding the taking of property;

(e) the potential reduction in agricultural production resulting from not granting additional forfeiture remissions and the associated social and economic impacts;

(f) the issue of fairness to both late and timely claimants; and

(g) the potential increased costs to the state and to late and timely claimants.

(2) The study must include an analysis of the potential for identifying individuals or classes of individuals whose additional forfeiture remission could be authorized in a manner that would have an acceptable impact on those issues identified under subsection (1). The classes of late claimants include but are not limited to previously decreed water rights holders and classes established according to filing date.

(3) The study must be completed in consultation with other relevant state and federal agencies, relevant groups and organizations, and other interested and affected citizens.

(4) The water policy committee shall report the results of the study to the 54th legislature by October 1, 1994. The report must include any legislative or other policy options recommended by the water policy committee."

Renumber: subsequent sections

44. Page 39, line 8.

Following: "SEVERABILITY"

Insert: "-- partial nonseverability"

Following: "."

Insert: "(1)"

45. Page 39.

Following: line 13

Insert: "(2) It is the intent of the legislature that each part of [this act] is essentially dependent upon [section 4], which amends 85-2-221, and that if one part of [section 4], except subsection (3)(f)(ii), is held unconstitutional or invalid, all other parts of [this act] are invalid."

46. Page 39, lines 14 through 20.

Strike: section 12 in its entirety

Renumber: subsequent section

PAGES WITH CHANGES

SENATE BILL NO. 310

INTRODUCED BY REA, KOEHNKE, SPRING, BECK, BURNETT, LYNCH,
 KASTEN, TVEIT, NATHE, HERTEL, DEVLIN, CRIPPEN, HIBBARD,
 WALLIN, M. HANSON, SWIFT, BACHINI, QUILICI, RYE,
 GROSFIELD, MESAROS, VAN VALKENBURG, HAGER, LARSON,
 SWYSGOOD, DEBRUYCKER, GRINDE, STOVALL, ZOOK, CLARK,
 TASH, BRUSKI-MAUS, VOGEL, WEEDING, KNOX

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING--FOR--THE
 ACCEPTANCE--OF--STATEMENTS-OF-CLAIM-TO-EXISTING-WATER-RIGHTS
 FILED--AFTER--5--P.M.--APRIL--30,--1982,--ESTABLISHING--A
 REBUTTABLE-PRESUMPTION-OF-ABANDONMENT-FOR-SUCH-WATER-RIGHTS;
 PROVIDING--FOR--THE--ESTABLISHMENT--OF--A--PROCEDURE--FOR
 ADJUDICATING--THOSE--RIGHTS,--PROVIDING--A--DEADLINE--FOR
 ACCEPTANCE--OF--STATEMENTS--OF--CLAIM,--AMENDING--SECTIONS
 85-2-221, 85-2-226, AND 85-2-231, MCA, AND PROVIDING AN
 IMMEDIATE--EFFECTIVE--DATE--AND--A--RETROACTIVE-APPLICABILITY
 DATE. PROVIDING FOR THE ^{(1) CONDITIONAL} REMISSION OF ^{(1) CERTAIN} THE FORFEITURE OF A
 CLAIMS TO EXISTING RIGHTS TO ^{(2) DETERMINED BY THE NEPAH VALLEY SUPRE} THE USE OF WATER ^{COULD} FORFEITED ^{HAVE}
 PURSUANT TO SECTION 85-2-226, MCA; PROVIDING FOR THE FILING ^{(3) LATE} OF A CLAIMS IN THE GENERAL WATER RIGHTS ADJUDICATION;
 PROVIDING FOR STATEWIDE NOTICE OF THE RIGHT TO FILE ^{(4) LATE} CLAIMS;
 PROVIDING FOR A DEADLINE FOR THE ACCEPTANCE OF CLAIMS IN

1 WHEREAS, IT HAS COME TO THE ATTENTION OF THE LEGISLATURE
 2 THAT THE FORFEITURE OF WATER RIGHTS FOR FAILURE TO TIMELY
 3 FILE A CLAIM HAS IN SOME INSTANCES CAUSED HARDSHIP, AND THE
 4 LEGISLATURE ACCORDINGLY DESIRES TO PROVIDE WATER RIGHTS
 5 CLAIMANTS WITH ONE MORE OPPORTUNITY TO ^{(C) FILE} ASSERT A WATER RIGHTS
 6 CLAIM IN THE GENERAL ADJUDICATION; AND

7 WHEREAS, IN SO DOING, THE LEGISLATURE RECOGNIZES THAT
 8 THE ADJUDICATION PROCESS WILL NOT BE COMPLETED FOR MANY
 9 YEARS BUT THAT A SUBSTANTIAL AMOUNT OF PROGRESS HAS ALREADY
 10 OCCURRED IN THE ADJUDICATION, SPECIFICALLY IN THE AREA OF
 11 WATER RIGHTS COMPACTS WITH INDIAN TRIBES AND THE FEDERAL
 12 GOVERNMENT AND IN DECREES AND STIPULATIONS INVOLVING
 13 INDIVIDUAL CLAIMANTS, AND THUS THE LEGISLATURE BELIEVES THAT
 14 IT IS NECESSARY TO ENSURE THAT PARTIES WHO ^{(7) HAVE BEEN RECOGNIZED AS HAVING} FILED CLAIMS ON
 15 OR BEFORE APRIL 30, 1982, AND HOLDERS OF FEDERAL RESERVED
 16 WATER RIGHTS ARE NOT ADVERSELY AFFECTED BY THE INCLUSION OF
 17 NEW PARTIES IN THE ADJUDICATION BY SUBJECTING THE RIGHT TO
 18 FILE THOSE CLAIMS IN REMISSION TO CERTAIN TERMS AND
 19 CONDITIONS; AND

20 WHEREAS, THE LEGISLATURE WISHES TO PROVIDE PROTECTION
 21 FOR TIMELY FILED CLAIMANTS FROM INCURRING ADDITIONAL COSTS
 22 OR FROM BEING ADVERSELY AFFECTED BY JUSTIFIABLE RELIANCE ON
 23 THE PRESUMPTION OF ABANDONMENT; AND

24 WHEREAS, THE LEGISLATURE WISHES TO PROVIDE A CONCLUSIVE
 25 ADJUDICATION OF EXISTING WATER RIGHTS; AND

Additionally, the legislature directs the water policy committee, in coordination with the department of justice, the department of natural resources and conservation, and the reserved water rights compact commission, to conduct an interim study regarding certain late claim issues. SB 0310/04

1 WHEREAS, THE LEGISLATURE RECOGNIZES THAT ACCORDING A
2 PRIVILEGE TO FILE ADDITIONAL STATEMENTS OF CLAIM PRESENTS A
3 POTENTIAL FOR ABUSE BY THOSE WHO MAY ATTEMPT TO REFILE
4 PREVIOUSLY ADJUDICATED CLAIMS, AND THE LEGISLATURE THUS
5 BELIEVES THAT THE COURTS SHOULD DEAL HARSHLY WITH ANY ABUSES
6 BY SUCH MEASURES AS, WITHOUT LIMITATION, THE IMPOSITION OF
7 SANCTIONS UNDER RULE 11, MONTANA RULES OF CIVIL PROCEDURE;
8 AND

9 WHEREAS, THE LEGISLATURE DETERMINES THAT THE DEADLINE
10 FOR FILING WATER RIGHT CLAIMS AS PROVIDED IN THIS BILL
11 APPROPRIATELY BALANCES THE INTERESTS AT STAKE IN THE
12 ADJUDICATION.

13 THEREFORE, THE LEGISLATURE FINDS IT IS APPROPRIATE TO
14 MAKE THE FOLLOWING AMENDMENTS TO SECTIONS 85-2-102,
15 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234,
16 85-2-237, AND 85-2-306, MCA, IN ORDER TO PROVIDE FOR THE
17 ACCEPTANCE OF ADDITIONAL STATEMENTS OF CLAIM TO EXISTING
18 WATER RIGHTS UNDER THE CONDITIONS SET FORTH IN THIS BILL.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 (Refer to Introduced Bill)

22 Strike everything after the enacting clause and insert:

23 **Section 1.** Section 85-2-102, MCA, is amended to read:

24 "85-2-102. (Temporary) Definitions. Unless the context
25 requires otherwise, in this chapter the following

1 the place of diversion, the place of use, the purpose of
2 use, or the place of storage.

3 (6) "Commission" means the fish, wildlife, and parks
4 commission provided for in 2-15-3402.

5 (7) "Declaration" means the declaration of an existing
6 right filed with the department under section 8, Chapter
7 452, Laws of 1973.

8 (8) "Department" means the department of natural
9 resources and conservation provided for in Title 2, chapter
10 15, part 33.

11 (9) "Existing right" means a right to the use of water
12 which would be protected under the law as it existed prior
13 to July 1, 1973.

14 (10) "Ground water" means any water that is beneath the
15 ground surface.

(10) to an existing right

16 (11) "LATE CLAIM" MEANS A CLAIM ~~FORFEITED~~ PURSUANT TO
17 THE CONCLUSIVE PRESUMPTION OF ABANDONMENT UNDER 85-2-226.

18 ~~(12)~~ (12) "Permit" means the permit to appropriate issued
19 by the department under 85-2-301 through 85-2-303 and
20 85-2-306 through 85-2-314.

21 ~~(13)~~ (13) "Person" means an individual, association,
22 partnership, corporation, state agency, political
23 subdivision, the United States or any agency thereof, or any
24 other entity. ⁽¹²⁾ -For purposes of 85-2-221(3), person includes-
25 predecessors in interest.--

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(9) "Ground water" means any water that is beneath the ground surface.

(10) "LATE CLAIM" MEANS A CLAIM ^{(12) to an existing right} FORFEITED PURSUANT TO THE CONCLUSIVE PRESUMPTION OF ABANDONMENT UNDER 85-2-226.

~~(10)~~ (11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(11)~~ (12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity. ⁽¹⁴⁾ For purposes of 85-2-221(3), person includes-

1 predecessors in interest.

2 ~~(12)~~(13) "Political subdivision" means any county,
3 incorporated city or town, public corporation, or district
4 created pursuant to state law or other public body of the
5 state empowered to appropriate water but not a private
6 corporation, association, or group.

7 ~~(13)~~(14) "Salvage" means to make water available for
8 beneficial use from an existing valid appropriation through
9 application of water-saving methods.

10 ~~(14)~~(15) "Waste" means the unreasonable loss of water
11 through the design or negligent operation of an
12 appropriation or water distribution facility or the
13 application of water to anything but a beneficial use.

14 ~~(15)~~(16) "Water" means all water of the state, surface
15 and subsurface, regardless of its character or manner of
16 occurrence, including but not limited to geothermal water,
17 diffuse surface water, and sewage effluent.

18 ~~(16)~~(17) "Watercourse" means any naturally occurring
19 stream or river from which water is diverted for beneficial
20 uses. It does not include ditches, culverts, or other
21 manmade waterways.

22 ~~(17)~~(18) "Water division" means a drainage basin as
23 defined in 3-7-102.

24 ~~(18)~~(19) "Water judge" means a judge as provided for in
25 Title 3, chapter 7.

1 a conspicuous location in each county courthouse and
 2 department field office in the state. ⁽¹⁵⁾ and to be maintained in that location through July 1, 1996

3 (v) It may also, in its discretion, provide notice in
 4 any other manner that will effectuate the purposes of
 5 85-2-221(3).

6 (b) The water court shall include notice of 85-2-221(3)
 7 in all notices, decrees, or orders issued pursuant to
 8 85-2-231 or 85-2-232 after [the effective date of this act]
 9 until July 1, 1995 1996.

10 (3) Notice given in accordance with subsection (2) must
 11 at a minimum indicate that any person who failed to file ⁽¹⁶⁾ a
 12 claim of existing right ^{(17) not filed with the department} before April 30, 1982, may file such
 13 claim ^{(18) be filed} by physically filing it with the department on or
 14 before July 1, 1995 1996, or sending it by United States
 15 mail, postmarked on or before July 1, 1995 1996.
 16 Additionally, the notice must indicate that UNDER 85-2-226,
 17 ⁽¹⁹⁾ AS—INTERPRETED—BY—THE MONTANA SUPREME COURT, a failure to
 18 file or mail the claim results in the forfeiture for all
 19 time of any existing rights to the use of water that are not
 20 claimed in accordance with the provisions of 85-2-221."

21 Section 4. Section 85-2-221, MCA, is amended to read:

22 "85-2-221. Filing of claim of existing water right ⁽²⁰⁾ ~~file~~ ⁽²¹⁾ late claim

23 A person claiming an existing right, unless exempted under
 24 85-2-222 or unless an earlier filing date is ordered as
 25 provided in 85-2-212, shall file with the department no

1 later than June 30, 1983, a statement of claim for each
2 water right asserted on a form provided by the department.

3 (2) The department shall file a copy of each statement
4 of claim with the clerk of the district court for the
5 judicial district in which the diversion is made or, if
6 there is a claimed right with no diversion, the department
7 shall file a copy of the statement of claim with the clerk
8 of the district court of the judicial district in which the
9 use occurs.

10 (3) Subject to certain terms and conditions, the
11 legislature intends to provide for the remission of the
12 forfeiture of existing rights to the use of water caused by
13 the failure to comply with subsection (1). Accordingly, WITH
14 RESPECT ONLY TO A BASIN THAT HAS NOT BEEN CLOSED TO FURTHER
15 APPROPRIATION PURSUANT TO A COMPACT RATIFIED BY THE
16 LEGISLATURE UNDER PART 7 OF THIS CHAPTER PRIOR TO [THE
17 EFFECTIVE DATE OF THIS ACT], ⁽²¹⁾ a person who failed to file a
18 claim of an existing water right ⁽²²⁾ ~~on or before April 30,~~ ^{not filed with the department}
19 1982, ⁽²³⁾ ~~may file~~ ^{be filed} ⁽²⁴⁾ ~~with the department a claim of an existing~~
20 water right on or before July 1, 1995 1996, on forms
21 provided by the department. This section is not intended to
22 prevent ⁽²⁵⁾ ~~a person who may have filed~~ ^{the filing of a late claim in addition to} a claim of an existing
23 water right ⁽²⁶⁾ ~~on or before April 30, 1982,~~ ^{filed} ⁽²⁷⁾ ~~from filing an~~
24 additional claim under this section if and to the extent
25 that the additional right claimed is not the same as the

(28) and is not an abandoned right
 1 right that was the subject of a previous claim. Claims must
 2 be physically submitted to the department or sent by United
 3 States mail, postmarked on or before the deadline set forth
 4 in this subsection, in order to be considered timely. (29) Within
 5 30 days of receipt, the department shall file copies of
 6 timely filed claims with the appropriate clerk of court as
 7 provided in subsection (2), and these The claims are then
 8 subject to adjudication by the district courts as any other
 9 claim of existing right. The claimant is then subject to all
 10 rights and obligations of any other party, except that:

11 (a) any claimant who has filed a claim after April 30,
 12 1982, but on or before July 17, 1995, 1996, must have the
 13 claim A LATE CLAIM MUST BE incorporated into the
 14 adjudication, subject to all prior proceedings, and does
 15 not, except as otherwise provided in 85-2-237, have the
 16 right to reopen decrees previously entered or to object to
 17 matters previously determined on the merits by the water
 18 court after objection, and THAT HAVE TAKEN PLACE PRIOR TO
 19 THE INCLUSION OF THE LATE CLAIM IN THE ADJUDICATION. (30) ^{date of filing}

20 (B) THE PERSON ASSERTING (31) ^{filing} A LATE CLAIM MAY REQUEST THAT
 21 A DECREE PREVIOUSLY ENTERED BE REOPENED OR MAY OBJECT TO
 22 MATTERS PREVIOUSLY DETERMINED ON THE MERITS BY THE WATER
 23 COURT ONLY TO THE EXTENT THAT THE REQUEST OR OBJECTION IS
 24 OTHERWISE AUTHORIZED BY LAW AND IS BASED ON A CLAIM OF WATER
 25 RIGHT FILED ON OR BEFORE APRIL 30, 1982, UNLESS THE PERSON (32)

1 ASSERTING A LATE CLAIM ALSO HAS FILED A CLAIM ON OR BEFORE
 2 APRIL 30, 1982;

3 (b)(C) any claimant who has filed a claim after April
 4 30, 1982, but on or before July 17, 1995, 1996, A PERSON
 5 ASSERTING^{(33) filing} A LATE CLAIM does not have the right or standing
 6 to object to any water rights compact reached in accordance
 7 with part 7 of this chapter that is ratified by the
 8 legislature prior to [the effective date of this act] EXCEPT
 9 TO THE EXTENT THAT RIGHT OR STANDING TO OBJECT EXISTS BASED
 10 ON A CLAIM OF WATER RIGHT FILED ON OR BEFORE APRIL 30, 1982,
 11 or to claim protection FOR THE RIGHT REPRESENTED IN THE LATE
 12 CLAIM under any provision of such a compact that
 13 subordinates the use of a water right recognized in the
 14 compact to a right recognized under state law; and

15 (c) any claimant who has filed a claim after April 30,
 16 1982, but on or before July 17, 1995, 1996, is liable for any
 17 costs and damages to any other claimant caused by the
 18 latter's actions in reasonable reliance upon the former's
 19 failure to file a claim on or before April 30, 1982, and
 20 upon the conclusive presumption of abandonment provided in
 21 85-2-226, and

22 (d) any existing right to the use of water that is the
 23 subject of a claim filed after April 30, 1982, is
 24 subordinate to:

25 (i) all filed claims finally adjudicated to be valid;

1 ~~(iii)-all---reserved---water---right---compacts---negotiated~~
 2 ~~pursuant-to-this-chapter;~~
 3 ~~(iii)-all---permits---and---reservations---of---water---issued~~
 4 ~~pursuant-to-this-chapter-if---and---to---the---extent---that---the~~
 5 ~~permitholder---or---reservation-holder-files-an-objection-under~~
 6 ~~this-part-and-proves-that-the---permitholder---or---reservation~~
 7 ~~holder-reasonably-relied-upon-the-failure-of-the-claimant-to~~
 8 ~~file-a-claim-on-or-before-April-30-1982,~~

9 (D) IF THE WATER JUDGE, FOLLOWING OBJECTION ⁽³⁴⁾ BY ANOTHER ^{under 85-2-233, finds}
 10 PERSON ASSERTING A CLAIM, FINDS THAT A RIGHT REPRESENTED IN
 11 A LATE CLAIM DID NOT EXIST ON JULY 1, 1973, OR THAT THE
 12 RIGHT REPRESENTED BY THE LATE CLAIM SHOULD BE SUBORDINATED
 13 TO ANOTHER RIGHT UNDER SUBSECTION (3)(F) OR THAT THE RIGHT
 14 REPRESENTED IN THE LATE CLAIM WAS THE SUBJECT OF A PRIOR
 15 ORDER OR DECREE BY THE WATER JUDGE ^{(35) or is otherwise without merit} THE WATER JUDGE SHALL
 16 AWARD COSTS AND REASONABLE ATTORNEY FEES TO THE PERSON OR
 17 PERSONS FILING THE OBJECTION;

18 ⁽³⁶⁾ (E) A PERSON WHO HAS A LATE CLAIM MAY BE FOUND LIABLE
 19 FOR COSTS AND DAMAGES INCURRED BY ANOTHER PERSON WHO PROVES
 20 BY A PREPONDERANCE OF THE EVIDENCE THAT THE COSTS AND
 21 DAMAGES WERE INCURRED AS A RESULT OF ACTIONS UNDERTAKEN IN
 22 REASONABLE RELIANCE UPON A LATE CLAIM AND THE CONCLUSIVE
 23 PRESUMPTION OF ABANDONMENT PROVIDED IN 85-2-226. A CLAIM
 24 FOR DAMAGES AND COSTS UNDER THIS SUBSECTION (E) MUST BE
 25 FILED IN A COURT OF GENERAL JURISDICTION ON OR BEFORE JULY

(e) A late claim is subordinate to all federal and Indian reserved water rights established by compact or decree under this chapter;

(f) Unless a late claim either was placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing

1, ---1998..

1 ACTION I: there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, the claim is, in addition, subordinate to:
 2 THE WAT: (i) all timely filed claims finally adjudicated to
 3 THE LATE valid; and
 4 (ii) a permit or reservation of water issued under
 5 DAMAGE. this chapter if and to the extent that the person holding
 6 (F) the permit or reservation files an objection under this part
 7 ASSERTED and proves that the person holding the permit or reservation
 reasonably relied to the detriment of the person holding the
 permit or reservation upon the failure of the claimant to
 file a claim on or before April 30, 1982."

8 30, 1982, TO A RESERVED WATER RIGHT COMPACT NEGOTIATED OR TO
 9 A PERMIT ISSUED PURSUANT TO THIS CHAPTER IF AND TO THE
 10 EXTENT THAT AN OBJECTION IS FILED UNDER THIS PART BY A
 11 PERSON ENTITLED TO SUBORDINATION BY JULY 1, 1998, AND THE
 12 OBJECTOR PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE
 13 OBJECTOR HAS REASONABLY RELIED TO THE OBJECTOR'S DETRIMENT
 14 UPON THE FAILURE TO FILE THE EXISTING RIGHT ON OR BEFORE
 15 APRIL 30, 1982, AND THE CONCLUSIVE PRESUMPTION OF
 16 ABANDONMENT PROVIDED IN 85-2-226.

17 (4) The department and the district courts may not
 18 accept any statements of claim physically submitted or
 19 postmarked after July 1, 1995 1996, AND SHALL NOTIFY A
 20 PERSON WHO FILES A CLAIM AFTER JULY 1, 1996, THAT THE CLAIM
 21 WILL NOT BE ACCEPTED."

22 Section 5. Section 85-2-225, MCA, is amended to read:

23 "85-2-225. Filing fee -- processing fee for remitted
 24 claims. (1) Each claim filed under 85-2-221 or 85-2-222 must
 25 be accompanied by a filing fee in the amount of \$40, subject

1 to the following exceptions:

2 (a) the total filing fees for all claims filed by one
3 person in any one water court division may not exceed \$480;
4 and

5 (b) no filing fee is required accompanying a claim of
6 an existing right that is included in a decree of a court in
7 the state of Montana and which that is accompanied by a copy
8 of that decree or pertinent portion thereof.

9 (2) A claim that is exempt from the filing requirements
10 of 85-2-221(1) but that is voluntarily filed must be
11 accompanied by a filing fee in the amount of \$40. Exempt
12 claims for a single development with several uses if filed
13 simultaneously may be accompanied by a filing fee in the
14 amount of \$40.

15 (3) (a) Except as provided in subsection (3)(b) (3)(C),
16 in addition to the filing fee set forth in subsection (1),
17 each statement of claim filed under 85-2-221(3) must be
18 accompanied by a processing fee in the amount of \$300 ⁽³⁷⁾ \$150
19 WHICH MUST BE DEPOSITED IN THE WATER RIGHTS ADJUDICATION
20 ACCOUNT. ⁽³⁸⁾

21 (B) IF AN OBJECTION IS FILED TO A LATE CLAIM, ⁽³⁹⁾ THE
22 JUDGE SHALL ASSESS AN ADDITIONAL FEE ⁽⁴⁰⁾ OF \$200 AGAINST THE
23 PERSON ASSERTING THE LATE CLAIM, ^{n.c. (41) assessment} WHICH FEE MUST BE DEPOSITED
24 IN THE WATER RIGHTS ADJUDICATION ACCOUNT. ^{n.c.}
25 (b)(C) For a statement of claim that was filed after

for the examination of late claims by the department and
for the publication of notices by the department as required

(no change in word)

1 April 30, 1982, but prior to [the effective date of this
2 act] or for a statement of claim filed by a state agency,
3 the processing fee provided for in subsection (3)(a) must be
4 paid on or before ⁽⁴²⁾ the entry of the temporary preliminary
5 decree or the preliminary decree for the basin for which the
6 claim is filed."

7 **Section 6.** Section 85-2-226, MCA, is amended to read:

8 "85-2-226. Abandonment by failure to file claim. The
9 failure to file a claim of an existing right as required by
10 85-2-221(1) establishes a conclusive presumption of
11 abandonment of that right."

12 **Section 7.** Section 85-2-234, MCA, is amended to read:

13 "85-2-234. Final decree. (1) The water judge shall, on
14 the basis of the preliminary decree and on the basis of any
15 hearing that may have been held, enter a final decree
16 affirming or modifying the preliminary decree. If no request
17 for a hearing is filed within the time allowed, the
18 preliminary decree automatically becomes final, and the
19 water judge shall enter it as the final decree.

20 (2) The terms of a compact negotiated and ratified
21 under 85-2-702 must be included in the final decree without
22 alteration unless an objection is sustained pursuant to
23 85-2-233; provided that the court may not alter or amend any
24 of the terms of a compact except with the prior written
25 consent of the parties in accordance with applicable law.

1 applying for or prior to receiving a permit under rules
2 adopted by the board under 85-2-113."

3 NEW SECTION.---Section 10.---Nonseverability.---It---is---the---
4 intent-of-the-legislature-that-each-part-of--[this--act]--is
5 essentially-dependent-upon-every-other-part, and-if-one-part
6 is--held--unconstitutional--or--invalid, all-other-parts-are
7 invalid.

(43) > See NEW SECTION 10 next page 11

(44) - partial nonseverability

8 NEW SECTION. SECTION 10. SEVERABILITY. (1) IF A PART OF
9 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
10 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
11 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
12 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
13 SEVERABLE FROM THE INVALID APPLICATIONS.

14 NEW SECTION.---SECTION 11. CONTINGENT VOIDNESS.---IF A
15 PART OF [THIS ACT] IS FOUND TO ESTABLISH A CONDITION UNDER
16 WHICH THE PROVISIONS OF TITLE 85 DO NOT PROVIDE FOR A
17 GENERAL STREAM ADJUDICATION FOR WHICH THE UNITED STATES HAS
18 WAIVED ITS IMMUNITY FROM SUIT UNDER 43 U.S.C. 666 OR IF A
19 PART OF 85-2-221(3)(C), AS AMENDED BY [THIS ACT], IS
20 INVALID, THEN [THIS ACT] IS VOID.

21 NEW SECTION. Section 12. Effective date. [This act] is
22 effective July 1, 1993.

-End-

(2) It is the intent of the legislature that each part of [this act] is essentially dependent upon [section 4], which amends 85-2-221, and that if one part of [section 4], except subsection (3)(f)(ii), is held unconstitutional or invalid, all other parts of [this act] are invalid.

"NEW SECTION. Section 10. Late claim interim study -- water policy committee. (1) The water policy committee, in coordination with the department of justice, the department of natural resources and conservation, and the reserved water rights compact commission, shall conduct an interim study analyzing the need for and desirability and impacts of allowing the remission of forfeited water rights in addition to the remissions authorized under the provisions of [this act]. The study must analyze the impacts of additional forfeiture remission on:

(a) the general stream adjudication process, including but not limited to the issues of adequacy and Montana's and the federal government's concurrent water rights adjudication jurisdiction;

(b) the federal government and Indian tribes regarding existing and future negotiated water rights compacts, including but not limited to the issues of equal protection;

(c) timely claimants' water use;

(d) timely claimants' legal rights, including but not limited to constitutional requirements regarding the taking of property;

(e) the potential reduction in agricultural production resulting from not granting additional forfeiture remissions and the associated social and economic impacts;

(f) the issue of fairness to both late and timely claimants; and

(g) the potential increased costs to the state and to late and timely claimants.

(2) The study must include an analysis of the potential for identifying individuals or classes of individuals whose additional forfeiture remission could be authorized in a manner that would have an acceptable impact on those issues identified under subsection (1). The classes of late claimants include but are not limited to previously decreed water rights holders and classes established according to filing date.

(3) The study must be completed in consultation with other relevant state and federal agencies, relevant groups and organizations, and other interested and affected citizens.

(4) The water policy committee shall report the results of the study to the 54th legislature by October 1, 1994. The report must include any legislative or other policy options recommended by the water policy committee."

Amendments to Senate Bill No. 310
Reference Copy

Requested by Rep. Anderson
For the Free Conference Committee

Prepared by Robert Person
April 20, 1993

1. Page 39.

Following: line 7

Insert: "NEW SECTION. Section 1. Saving clause. [This act] does not affect proceedings that were begun before [the effective date of this act] in which relief for damages have been sought based upon the diversion, impoundment, or withdrawal of water without a water right established under state law."

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 4/20/93

BILL NO. SB 310

AMENDMENTS TO
CONFERENCE COMMITTEE AMENDMENTS TO SB 310

April 20, 1993

Amend: Amendment No. 38

Following: Subsection "9"

Insert: "(h) potential losses in revenue to the state of Montana resulting from the state's failure to file claims to existing water rights; *on or before Nov 30 1982*

(i) implications involving the state's trust responsibilities;"
(j) potential litigation against the state by private parties;"
(k) impacts on municipal and county governments resulting from late claims."

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 4/20/93

NO. SB 310

Amendments to Senate Bill No. 310
Reference Copy

Requested by Sen. Rea

Prepared by Michael S. Kakuk
April 20, 1993

Substitute Amendment No. 36

1. Page 22, line 18 through page 23, line 16.

Strike: subsections (e) and (f) in their entirety

Insert: "(e) a late claim is subordinate to all federal and Indian reserved water rights established by compact or decree under this chapter and ratified prior to [the effective date of this act];

(f) unless a late claim either was placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, the claim is, in addition, subordinate to:

(i) all timely filed claims finally adjudicated to be valid; and

(ii) a permit or reservation of water issued under this chapter if and to the extent that the person holding the permit or reservation files an objection under this part and proves that the person holding the permit or reservation reasonably relied to the detriment of the person holding the permit or reservation upon the failure of the claimant to file a claim on or before April 30, 1982."

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE 4/20/93

BILL NO. SB 310

Amendments to Senate Bill No. 310
Reference Copy

Requested by Sen. Rea

Prepared by Michael S. Kakuk
April 20, 1993

Institute Amendment No. 36

Page 22, line 18 through page 23, line 16.

like: subsections (e) and (f) in their entirety

part: "(e) a late claim is subordinate to all federal and Indian reserved water rights established by compact or decree under this chapter;

(f) unless a late claim either was placed in the United States mail and postmarked on or before April 30, 1982, or, if there is evidence of execution on or before April 30, 1982, and actual receipt by the department within a reasonable period of time following April 30, 1982, or within a reasonable period of time following the date of discovery that the claim had not been received by the department on or before April 30, 1982, the claim is, in addition, subordinate to:

(i) all timely filed claims finally adjudicated to be valid; and

(ii) a permit or reservation of water issued under this chapter if and to the extent that the person holding the permit or reservation files an objection under this part and proves that the person holding the permit or reservation reasonably relied to the detriment of the person holding the permit or reservation upon the failure of the claimant to file a claim on or before April 30, 1982."

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 5

DATE 4/20/93

BILL NO. SB 310

SENATE BILL NO. 310

INTRODUCED BY REA, KOEHNKE, SPRING, BECK, BURNETT, LYNCH,
 KASTEN, TVEIT, NATHE, HERTEL, DEVLIN, CRIPPEN, HIBBARD,
 WALLIN, M. HANSON, SWIFT, BACHINI, QUILICI, RYE,
 GROSFIELD, MESAROS, VAN VALKENBURG, HAGER, LARSON,
 SWYSGOOD, DEBRUYCKER, GRINDE, STOVALL, ZOOK, CLARK,
 TASH, BRUSKI-MAUS, VOGEL, WEEDING, KNOX

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING--FOR--THE
 ACCEPTANCE--OF--STATEMENTS--OF--CLAIM--TO--EXISTING--WATER--RIGHTS
 FILED--AFTER--5--P.M.,--APRIL--30,--1982,--ESTABLISHING--A
 REBUTTABLE-PRESUMPTION-OF-ABANDONMENT-FOR-SUCH-WATER-RIGHTS,
 PROVIDING---FOR---THE---ESTABLISHMENT--OF--A--PROCEDURE--FOR
 ADJUDICATING--THOSE--RIGHTS,--PROVIDING---A---DEADLINE---FOR
 ACCEPTANCE---OF---STATEMENTS--OF--CLAIM,--AMENDING--SECTIONS
 85-2-221, 85-2-226, AND 85-2-231, MCA, AND PROVIDING AN
 IMMEDIATE--EFFECTIVE--DATE--AND--A--RETROACTIVE--APPLICABILITY
 DATE; PROVIDING FOR THE CONDITIONAL REMISSION OF THE
FORFEITURE--OF CERTAIN CLAIMS TO EXISTING RIGHTS TO THE USE
OF WATER DETERMINED BY THE MONTANA SUPREME COURT TO HAVE
BEEN FORFEITED FORFEITED PURSUANT TO SECTION 85-2-226, MCA;
PROVIDING FOR THE FILING OF LATE CLAIMS IN THE GENERAL WATER
RIGHTS ADJUDICATION; PROVIDING FOR STATEWIDE NOTICE OF THE
RIGHT TO FILE LATE CLAIMS; PROVIDING FOR A DEADLINE FOR THE
ACCEPTANCE OF CLAIMS IN REMISSION; PROVIDING FOR CONDITIONS

UPON THE ADJUDICATION OF SUCH LATE CLAIMS; DIRECTING THE
WATER POLICY COMMITTEE, IN COORDINATION WITH CERTAIN STATE
AGENCIES, TO CONDUCT AN INTERIM STUDY REGARDING LATE CLAIM
ISSUES; AMENDING SECTIONS 85-2-102, 85-2-211, 85-2-213,
85-2-221, 85-2-225, 85-2-226, 85-2-234, 85-2-237, AND
85-2-306, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS,--Article--IX,--section--3,--of--the--Montana
 Constitution--provides--that--all--existing--rights--to--the--use--of
 any--waters--for--any--useful--or--beneficial--purpose--are
 recognized--and--confirmed;--and

WHEREAS,--Article--IX,--section--3,--of--the--Montana
 Constitution--provides--that--the--legislature--shall--provide--for
 the--administration,--control,--and--regulation--of--water--rights
 and--shall--establish--a--system--of--centralized--records;--and

WHEREAS,--Article--IX--of--the--Montana--Constitution--was
 adopted--to--protect--Montana--water--rights--from--claims--by--water
 users--in--downstream--states;--and

WHEREAS,--in--order--to--protect--Montana--water--rights--from
 downstream--claims,--the--Montana--legislature--established--a
 procedure--for--the--general--adjudication--of--water--rights--and
 provided--in--section--85-2-226,--MCA,--that--the--failure--to--file
 a--claim--to--an--existing--right--in--response--to--a--general--notice
 of--adjudication--and--in--accordance--with--the--deadline
 established--under--section--85-2-221,--MCA,--would--establish--a

1 conclusive presumption of abandonment of that right; and
 2 WHEREAS, section 85-2-226, MCA, was enacted to
 3 facilitate the prompt filing of claims and speedy
 4 adjudication on the merits of each case; and
 5 WHEREAS, the general adjudication is still pending, and
 6 through the course of the adjudication, it has come to the
 7 attention of the legislature that the provisions of section
 8 85-2-226, MCA, may result in the loss of otherwise valid
 9 Montana water rights; and
 10 WHEREAS, the legislature determines that the summary
 11 abandonment of water rights does not afford adequate
 12 protection to Montana water rights as intended by the
 13 Montana Constitution and by the Montana legislature and is
 14 inconsistent with long-established principles of
 15 abandonment; and
 16 WHEREAS, it is the intent of the legislature that the
 17 adjudication process must provide for the adjudication of
 18 all Montana water rights in existence on July 17, 1973; and
 19 WHEREAS, because the general adjudication of water
 20 rights is not completed and will be ongoing for at least 20
 21 years, the legislature finds that the acceptance of
 22 additional statements of claim will not unduly delay the
 23 adjudication; and
 24 WHEREAS, the legislature determines that section
 25 85-2-226, MCA, imposes a harsh and unnecessary penalty for

1 failure to file a Statement of Claim by April 30, 1982; and
 2 that the penalty is not consistent with the intent of the
 3 Montana Constitution and of the legislature and should,
 4 therefore, be adjusted in a manner that will more
 5 appropriately balance the interests at stake in the
 6 adjudication and enable the Water Court to adjudicate all
 7 existing water rights.
 8 THEREFORE, the legislature finds that it is appropriate
 9 to make the following amendments to sections 85-2-221,
 10 85-2-226, and 85-2-231, MCA, in order to provide for the
 11 acceptance of additional statements of claim to existing
 12 water rights under the conditions set forth below:

 14 STATEMENT OF INTENT

15 A statement of intent is included with this bill to
 16 provide comment to the Montana supreme court regarding the
 17 adoption of rules of procedure by the court. The intent of
 18 this legislation is to balance the interests of the state
 19 and of those holding Montana water rights by establishing a
 20 rebuttable, rather than a conclusive, presumption of
 21 abandonment for statements of claim filed after April 30,
 22 1982, and by allowing the adjudication of those claims.
 23 Because the adjudication is within the jurisdiction of the
 24 judicial branch, the legislature believes that the Montana
 25 supreme court should adopt rules of procedure governing the

1 adjudication---of---these---water---rights---The---legislature
 2 recognizes-that-various---basins---within---the---state---are---in
 3 different---stages---in---the---adjudication---and---that---the
 4 legislature-has-provided---a---mechanism---for---reopening---both
 5 preliminary-and-final-decrees---It-is---the-intent-of-the
 6 legislature,therefore,---that---procedures---be---developed---to
 7 allow-for-the-adjudication-of-late-claims-submitted-prior-to
 8 the---closure-of-court-records-preceding-the-date-of-issuance
 9 of-the-preliminary-decree-or-in---those-basins---in---which---a
 10 preliminary---decree---has-not-yet-been-rendered---in-basins-in
 11 which-a-preliminary-decree-or-final-decree-has-been---issued,
 12 the---legislature---intends---that---the---late-filed---claims---be
 13 adjudicated---when---the-decree-is-reopened-in-accordance-with
 14 85-2-237---In---both---cases,---the---late-claimant---should-be
 15 required-to-file-a-request-for-hearing-on-the-late-claims.

16 With-respect-to-notice,---the---legislature---intends---that
 17 notice---be---provided-to-water-users-that-late-claims-will-be
 18 accepted,---subject---to---a---rebuttable---presumption---of
 19 abandonment,---and---that---objections-to-the-presumption---or---the
 20 claim---may---be---filed---Whenever-possible,---the-notice-must-be
 21 provided---in---court-generated---documents---of---general
 22 circulation,---such---as---the---temporary-preliminary-decree,
 23 notice-of-objection,---preliminary-decree,---and---order-of
 24 reopening.---When---this---is---not---possible,---the-court-should
 25 devise-an-alternative-method-for-notifying-water---users---who

1 may---be---affected---by---the-late-claim---in---instances-in-which
 2 special---notice---is---required,---the---claimant---requesting---a
 3 hearing-on-the-late-claim-should-reimburse-the---water---court
 4 for---the---costs-associated-with-providing-the-notice---in---all
 5 cases,---the-water-court-may-assess-a-fee-for-the-filing-of---a
 6 request---for-hearing-on-late-claims.---This-fee-may-not-exceed
 7 \$300-per-request,---and-a-claimant-should---submit---a---separate
 8 request-for-each-basin-in-which-late-claims-are-filed.

9 WHEREAS, ARTICLE IX, SECTION 3, OF THE MONTANA
 10 CONSTITUTION PROVIDES THAT ALL EXISTING RIGHTS TO THE USE OF
 11 ANY WATERS FOR ANY USEFUL OR BENEFICIAL PURPOSE ARE
 12 RECOGNIZED AND CONFIRMED; AND

13 WHEREAS, ARTICLE IX, SECTION 3, OF THE MONTANA
 14 CONSTITUTION REQUIRES THE LEGISLATURE TO PROVIDE FOR THE
 15 ADMINISTRATION, CONTROL, AND REGULATION OF WATER RIGHTS AND
 16 TO ESTABLISH A SYSTEM OF CENTRALIZED RECORDS FOR SUCH
 17 RIGHTS; AND

18 WHEREAS, THE LEGISLATURE ESTABLISHED A PROCEDURE FOR THE
 19 GENERAL ADJUDICATION OF EXISTING RIGHTS TO THE USE OF WATER
 20 AND PROVIDED IN SECTION 85-2-226, MCA, THAT THE FAILURE TO
 21 FILE A CLAIM OF EXISTING RIGHT ON OR BEFORE THE DEADLINE
 22 ESTABLISHED UNDER SECTION 85-2-221, MCA, WOULD ESTABLISH A
 23 CONCLUSIVE ABANDONMENT OF THE RIGHT; AND

24 WHEREAS, THE MONTANA SUPREME COURT, IN IN THE MATTER OF
 25 THE ADJUDICATION OF THE WATER RIGHTS WITHIN THE YELLOWSTONE

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1 RIVER, 253 MONT. 167, 832 P.2D 1210 (1992), HAS DETERMINED
 2 THAT THE FAILURE TO FILE A STATEMENT OF CLAIM TO AN EXISTING
 3 RIGHT TO THE USE OF WATER ON OR BEFORE APRIL 30, 1982,
 4 RESULTED IN THE FORFEITURE OF THAT RIGHT; AND

5 WHEREAS, IT HAS COME TO THE ATTENTION OF THE LEGISLATURE
 6 THAT THE FORFEITURE OF WATER RIGHTS FOR FAILURE TO TIMELY
 7 FILE A CLAIM HAS IN SOME INSTANCES CAUSED HARDSHIP, AND THE
 8 LEGISLATURE ACCORDINGLY DESIRES TO PROVIDE WATER RIGHTS
 9 CLAIMANTS WITH ONE MORE OPPORTUNITY TO ASSERT FILE A WATER
 10 RIGHTS CLAIM IN THE GENERAL ADJUDICATION; AND

11 WHEREAS, IN SO DOING, THE LEGISLATURE RECOGNIZES THAT
 12 THE ADJUDICATION PROCESS WILL NOT BE COMPLETED FOR MANY
 13 YEARS BUT THAT A SUBSTANTIAL AMOUNT OF PROGRESS HAS ALREADY
 14 OCCURRED IN THE ADJUDICATION, SPECIFICALLY IN THE AREA OF
 15 WATER RIGHTS COMPACTS WITH INDIAN TRIBES AND THE FEDERAL
 16 GOVERNMENT AND IN DECREES AND STIPULATIONS INVOLVING
 17 INDIVIDUAL CLAIMANTS, AND THUS THE LEGISLATURE BELIEVES THAT
 18 IT IS NECESSARY TO ENSURE THAT PARTIES WHO HAVE BEEN
 19 RECOGNIZED AS HAVING FILED CLAIMS ON OR BEFORE APRIL 30,
 20 1982, AND HOLDERS OF FEDERAL RESERVED WATER RIGHTS ARE NOT
 21 ADVERSELY AFFECTED BY THE INCLUSION OF NEW PARTIES IN THE
 22 ADJUDICATION BY SUBJECTING THE RIGHT TO FILE THOSE CLAIMS IN
 23 REMISSION TO CERTAIN TERMS AND CONDITIONS; AND

24 WHEREAS, THE LEGISLATURE WISHES TO PROVIDE PROTECTION
 25 FOR TIMELY FILED CLAIMANTS FROM INCURRING ADDITIONAL COSTS

1 OR FROM BEING ADVERSELY AFFECTED BY JUSTIFIABLE RELIANCE ON
 2 THE PRESUMPTION OF ABANDONMENT; AND

3 WHEREAS, THE LEGISLATURE WISHES TO PROVIDE A CONCLUSIVE
 4 ADJUDICATION OF EXISTING WATER RIGHTS; AND

5 WHEREAS, THE LEGISLATURE RECOGNIZES THAT ACCORDING A
 6 PRIVILEGE TO FILE ADDITIONAL STATEMENTS OF CLAIM PRESENTS A
 7 POTENTIAL FOR ABUSE BY THOSE WHO MAY ATTEMPT TO REFILE
 8 PREVIOUSLY ADJUDICATED CLAIMS, AND THE LEGISLATURE THUS
 9 BELIEVES THAT THE COURTS SHOULD DEAL HARSHLY WITH ANY ABUSES
 10 BY SUCH MEASURES AS, WITHOUT LIMITATION, THE IMPOSITION OF
 11 SANCTIONS UNDER RULE 11, MONTANA RULES OF CIVIL PROCEDURE;
 12 AND

13 WHEREAS, THE LEGISLATURE DETERMINES THAT THE DEADLINE
 14 FOR FILING WATER RIGHT CLAIMS AS PROVIDED IN THIS BILL
 15 APPROPRIATELY BALANCES THE INTERESTS AT STAKE IN THE
 16 ADJUDICATION.

17 THEREFORE, THE LEGISLATURE FINDS IT IS APPROPRIATE TO
 18 MAKE THE FOLLOWING AMENDMENTS TO SECTIONS 85-2-102,
 19 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234,
 20 85-2-237, AND 85-2-306, MCA, IN ORDER TO PROVIDE FOR THE
 21 ACCEPTANCE OF ADDITIONAL-STATEMENTS-OF-CLAIM LATE CLAIMS TO
 22 EXISTING THE USE OF WATER RIGHTS UNDER THE CONDITIONS SET
 23 FORTH IN THIS BILL. ADDITIONALLY, THE LEGISLATURE DIRECTS
 24 THE WATER POLICY COMMITTEE, IN COORDINATION WITH THE
 25 DEPARTMENT OF JUSTICE, THE DEPARTMENT OF NATURAL RESOURCES

AND CONSERVATION, AND THE RESERVED WATER RIGHTS COMPACT
COMMISSION, TO CONDUCT AN INTERIM STUDY REGARDING CERTAIN
LATE CLAIM ISSUES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for

the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(10) "Ground water" means any water that is beneath the ground surface.

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(11) "LATE CLAIM" MEANS A CLAIM TO AN EXISTING RIGHT FORFEITED PURSUANT TO THE CONCLUSIVE PRESUMPTION OF ABANDONMENT UNDER 85-2-226.

~~(12)~~ (12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(13)~~ (13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity. ~~For purposes of 85-2-221(3), person includes predecessors-in-interest.~~

~~(14)~~ (14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

~~(15)~~ (15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(16)~~ (16) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(17)~~ (17) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of

occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(18)~~ (18) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

~~(19)~~ (19) "Water division" means a drainage basin as defined in 3-7-102.

~~(20)~~ (20) "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(21)~~ (21) "Water master" means a master as provided for in Title 3, chapter 7.

~~(22)~~ (22) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)

85-2-102. (Effective July 1, 1999) Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(9) "Ground water" means any water that is beneath the ground surface.

(10) "LATE CLAIM" MEANS A CLAIM TO AN EXISTING RIGHT FORFEITED PURSUANT TO THE CONCLUSIVE PRESUMPTION OF ABANDONMENT UNDER 85-2-226.

~~(10)~~ (11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(11)~~ (12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity. For purposes of 85-2-221(3), person includes predecessors-in-interest.

~~(12)~~ (13) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

~~(13)~~ (14) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(14)~~ (15) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

1 †15)(16) "Water" means all water of the state, surface
2 and subsurface, regardless of its character or manner of
3 occurrence, including but not limited to geothermal water,
4 diffuse surface water, and sewage effluent.

5 †16)(17) "Watercourse" means any naturally occurring
6 stream or river from which water is diverted for beneficial
7 uses. It does not include ditches, culverts, or other
8 manmade waterways.

9 †17)(18) "Water division" means a drainage basin as
10 defined in 3-7-102.

11 †18)(19) "Water judge" means a judge as provided for in
12 Title 3, chapter 7.

13 †19)(20) "Water master" means a master as provided for
14 in Title 3, chapter 7.

15 †20)(21) "Well" means any artificial opening or
16 excavation in the ground, however made, by which ground
17 water is sought or can be obtained or through which it flows
18 under natural pressures or is artificially withdrawn."

19 Section 2. Section 85-2-211, MCA, is amended to read:

20 "85-2-211. Petition by attorney general. Within 20 days
21 after May 11, 1979, the state of Montana upon relation of
22 the attorney general shall petition the Montana supreme
23 court to require all persons claiming a right within a water
24 division to file a claim of the right as provided in
25 85-2-221(1)."

1 Section 3. Section 85-2-213, MCA, is amended to read:

2 "85-2-213. Notice of order -- additional filing period.

3 (1) To assure that all persons who may claim an existing
4 water right are notified of the requirement to file a claim
5 of that right, the Montana supreme court shall give notice
6 of the order as follows:

7 †1)(a) It shall cause the order, printed in not less
8 than 10-point type, to be placed in a prominent and
9 conspicuous place in all daily newspapers of the state and
10 in at least one newspaper published in each county of the
11 state within 30 days after the Montana supreme court order
12 as provided in 85-2-212 and in April of 1980, 1981, 1982,
13 and 1983.

14 †2)(b) It shall cause the order, in writing, to be
15 placed in a prominent and conspicuous location in each
16 county courthouse in the state within 30 days after the
17 Montana supreme court order as provided in 85-2-212.

18 †3)(c) It shall provide a sufficient number of copies
19 of the order to the county treasurers before October 15,
20 1979, 1980, 1981, and 1982, and the county treasurers shall
21 enclose a copy of the order with each statement of property
22 taxes mailed in 1979, 1980, 1981, and 1982. In the
23 implementation of this subsection, the department shall
24 provide reimbursement to each county treasurer for the
25 reasonable additional costs incurred by the treasurer

arising from the inclusion of the order required by this section. The department shall be reimbursed for such costs from the water right adjudication account created by 85-2-241.

~~(4)~~(d) It shall provide copies of the order, in writing, to the press services with offices located in Helena within 30 days after the Montana supreme court order as provided in 85-2-212, and in April of 1980, 1981, 1982, and 1983.

~~(5)~~(e) It shall, under authority granted to the states by 43 U.S.C. 666, provide for service of the petition and order upon the United States attorney general or his designated representative.

~~(6)~~(f) It may also in its discretion give notice of the order in any other manner that will carry out the purposes of this section.

~~(7)~~(g) It may also in its discretion order that the department or the water judge assist the Montana supreme court in the carrying out of this section.

(2) (a) To assure that all persons who failed to file a claim of existing right under 85-2-221(1) are provided notice of the opportunity to file a claim on or before July 1, 1995 1996, as provided in 85-2-221(3), the department shall provide notice as follows:

(i) It shall, in October 1993, April and October 1994,

and April AND OCTOBER 1995, AND APRIL 1996, cause a notice of the right to file a claim in accordance with 85-2-221(3) to be published in all daily newspapers in the state and in at least one newspaper in each county in the state.

(ii) It shall, in October 1993, April and October 1994, and April AND OCTOBER 1995, AND APRIL 1996, provide copies of the notice, in writing, to the press services with offices located in Helena.

(iii) It shall, by October 1993, provide copies of the notice to the United States attorney general and to all Indian tribes in Montana.

(iv) It shall cause copies of the notice to be posted in a conspicuous location in each county courthouse and department field office in the state AND TO BE MAINTAINED IN THAT LOCATION THROUGH JULY 1, 1996.

(v) It may also, in its discretion, provide notice in any other manner that will effectuate the purposes of 85-2-221(3).

(b) The water court shall include notice of 85-2-221(3) in all notices, decrees, or orders issued pursuant to 85-2-231 or 85-2-232 after [the effective date of this act] until July 1, 1995 1996.

(3) Notice given in accordance with subsection (2) must at a minimum indicate that any person-who-failed-to-file-a claim of existing right NOT FILED WITH THE DEPARTMENT before

1 April 30, 1982, may ~~file such claim~~ BE FILED by physically
 2 filing it with the department on or before July 1, 1995
 3 1996, or sending it by United States mail, postmarked on or
 4 before July 1, 1995 1996. Additionally, the notice must
 5 indicate that UNDER 85-2-226, ~~AS INTERPRETED BY THE--MONTANA~~
 6 ~~SUPREME--COURT~~, a failure to file or mail the claim results
 7 in the forfeiture for all time of any existing rights to the
 8 use of water that are not claimed in accordance with the
 9 provisions of 85-2-221."

10 **Section 4.** Section 85-2-221, MCA, is amended to read:

11 **"85-2-221. Filing of claim of existing water right --**
 12 **FILING LATE CLAIM.** (1) A person claiming an existing right,
 13 unless exempted under 85-2-222 or unless an earlier filing
 14 date is ordered as provided in 85-2-212, shall file with the
 15 department no later than June 30, 1983, a statement of claim
 16 for each water right asserted on a form provided by the
 17 department.

18 (2) The department shall file a copy of each statement
 19 of claim with the clerk of the district court for the
 20 judicial district in which the diversion is made or, if
 21 there is a claimed right with no diversion, the department
 22 shall file a copy of the statement of claim with the clerk
 23 of the district court of the judicial district in which the
 24 use occurs.

25 (3) Subject to certain terms and conditions, the

1 legislature intends to provide for the remission of the
 2 forfeiture of existing rights to the use of water caused by
 3 the failure to comply with subsection (1). Accordingly, WITH
 4 RESPECT ONLY TO A BASIN THAT HAS NOT BEEN CLOSED TO FURTHER
 5 APPROPRIATION PURSUANT TO A COMPACT RATIFIED BY THE
 6 LEGISLATURE UNDER PART 7 OF THIS CHAPTER PRIOR TO [THE
 7 EFFECTIVE DATE OF THIS ACT], a ~~person who failed to file a~~
 8 claim of an existing water right NOT FILED WITH THE
 9 DEPARTMENT on or before April 30, 1982, may ~~file~~ BE FILED
 10 with the department ~~a claim of an existing water right~~ on or
 11 before July 1, 1995 1996, on forms provided by the
 12 department. This section is not intended to prevent a person
 13 ~~who may have filed~~ THE FILING OF A LATE CLAIM IN ADDITION TO
 14 a claim of an existing water right FILED on or before April
 15 30, 1982, ~~from filing an additional claim under this section~~
 16 if and to the extent that the additional right claimed is
 17 not the same as the right that was the subject of a previous
 18 claim AND IS NOT AN ABANDONED RIGHT. Claims must be
 19 physically submitted to the department or sent by United
 20 States mail, postmarked on or before the deadline set forth
 21 in this subsection, in order to be considered timely. Within
 22 ~~30 days of receipt, the department shall file copies of~~
 23 ~~timely filed claims with the appropriate clerk of court as~~
 24 ~~provided in subsection (2) and those~~ THE claims are then
 25 subject to adjudication by the district courts as any other

claim of existing right. The claimant is then subject to all rights and obligations of any other party, except that:

(a) ~~any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995 1996, must have the claim~~ A LATE CLAIM MUST BE incorporated into the adjudication, subject to all prior proceedings, ~~and does not, except as otherwise provided in 85-2-237, have the right to reopen decrees previously entered or to object to matters previously determined on the merits by the water court after objection; and~~ THAT HAVE TAKEN PLACE PRIOR TO THE INCLUSION OF THE LATE CLAIM IN THE ADJUDICATION DATE OF FILING;

(B) THE PERSON ASSERTING FILING A LATE CLAIM MAY REQUEST THAT A DECREE PREVIOUSLY ENTERED BE REOPENED OR MAY OBJECT TO MATTERS PREVIOUSLY DETERMINED ON THE MERITS BY THE WATER COURT ONLY TO THE EXTENT THAT THE REQUEST OR OBJECTION IS OTHERWISE AUTHORIZED BY LAW AND IS BASED ON A CLAIM OF WATER RIGHT FILED ON OR BEFORE APRIL 30, 1982, ~~UNLESS THE PERSON ASSERTING A LATE CLAIM ALSO HAS FILED A CLAIM ON OR BEFORE APRIL 30, 1982;~~

(b)(C) ~~any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995 1996,~~ A PERSON ASSERTING FILING A LATE CLAIM does not have the right or standing to object to any water rights compact reached in accordance with part 7 of this chapter that is ratified by

the legislature prior to [the effective date of this act] EXCEPT TO THE EXTENT THAT RIGHT OR STANDING TO OBJECT EXISTS BASED ON A CLAIM OF WATER RIGHT FILED ON OR BEFORE APRIL 30, 1982, or to claim protection FOR THE RIGHT REPRESENTED IN THE LATE CLAIM under any provision of such a compact that subordinates the use of a water right recognized in the compact to a right recognized under state law; and

~~(c) any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995 1996, is liable for any costs and damages to any other claimant caused by the latter's actions in reasonable reliance upon the former's failure to file a claim on or before April 30, 1982, and upon the conclusive presumption of abandonment provided in 85-2-226; and~~

~~(d) any existing right to the use of water that is the subject of a claim filed after April 30, 1982, is subordinate to;~~

~~(i) all filed claims finally adjudicated to be valid;~~

~~(ii) all reserved water rights compacts negotiated pursuant to this chapter;~~

~~(iii) all permits and reservations of water issued pursuant to this chapter if and to the extent that the permitholder or reservation holder files an objection under this part and proves that the permitholder or reservation holder reasonably relied upon the failure of the claimant to~~

1 file a claim on or before April 30, 1982.

2 (D) IF THE WATER JUDGE, FOLLOWING OBJECTION BY ANOTHER
3 PERSON ASSERTING A CLAIM, FINDS THAT A RIGHT REPRESENTED IN
4 A LATE CLAIM DID NOT EXIST ON JULY 1, 1973, OR THAT THE
5 RIGHT REPRESENTED BY THE LATE CLAIM SHOULD BE SUBORDINATED
6 TO ANOTHER RIGHT UNDER SUBSECTION (3)(P) OR UNDER 85-2-233,
7 FINDS THAT THE RIGHT REPRESENTED IN THE LATE CLAIM WAS THE
8 SUBJECT OF A PRIOR ORDER OR DECREE BY THE WATER JUDGE OR IS
9 OTHERWISE WITHOUT MERIT, THE WATER JUDGE SHALL AWARD COSTS
10 AND REASONABLE ATTORNEY FEES TO THE PERSON OR PERSONS FILING
11 THE OBJECTION;

12 (E) A PERSON WHO HAS A LATE CLAIM MAY BE FOUND LIABLE
13 FOR COSTS AND DAMAGES INCURRED BY ANOTHER PERSON WHO PROVES
14 BY A PREPONDERANCE OF THE EVIDENCE THAT THE COSTS AND
15 DAMAGES WERE INCURRED AS A RESULT OF ACTIONS UNDERTAKEN IN
16 REASONABLE RELIANCE UPON A LATE CLAIM AND THE CONCLUSIVE
17 PRESUMPTION OF ABANDONMENT PROVIDED IN 85-2-226. A CLAIM
18 FOR DAMAGES AND COSTS UNDER THIS SUBSECTION (E) MUST BE
19 FILED IN A COURT OF GENERAL JURISDICTION ON OR BEFORE JULY
20 1, 1998. THE COURT OF GENERAL JURISDICTION IN WHICH THE
21 ACTION IS COMMENCED MAY, UPON MOTION, CERTIFY THE CASE TO
22 THE WATER COURT FOR SUBORDINATION OF THE RIGHT ASSERTED IN
23 THE LATE CLAIM IF SUBORDINATION WILL CURE THE ALLEGED
24 DAMAGE.

25 (P) THE WATER JUDGE MAY SUBORDINATE AN EXISTING RIGHT

1 ASSERTED IN A LATE CLAIM TO A CLAIM FILED ON OR BEFORE APRIL
2 30, 1982, TO A RESERVED WATER RIGHT COMPACT NEGOTIATED OR TO
3 A PERMIT ISSUED PURSUANT TO THIS CHAPTER IF AND TO THE
4 EXTENT THAT AN OBJECTION IS FILED UNDER THIS PART BY A
5 PERSON ENTITLED TO SUBORDINATION BY JULY 1, 1998, AND THE
6 OBJECTOR PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE
7 OBJECTOR HAS REASONABLY RELIED TO THE OBJECTOR'S DETRIMENT
8 UPON THE FAILURE TO FILE THE EXISTING RIGHT ON OR BEFORE
9 APRIL 30, 1982, AND THE CONCLUSIVE PRESUMPTION OF
10 ABANDONMENT PROVIDED IN 85-2-226.

11 (E) A RIGHT REPRESENTED IN A LATE CLAIM IS SUBORDINATE
12 TO ALL FEDERAL AND INDIAN RESERVED WATER RIGHTS ESTABLISHED
13 BY COMPACT OR DECREE UNDER THIS CHAPTER;

14 (F) UNLESS A LATE CLAIM EITHER WAS PLACED IN THE UNITED
15 STATES MAIL AND POSTMARKED ON OR BEFORE APRIL 30, 1982, OR,
16 IF THERE IS NO EVIDENCE OF THE DATE OF MAILING, THERE IS
17 EVIDENCE OF EXECUTION ON OR BEFORE APRIL 30, 1982, AND
18 ACTUAL RECEIPT BY THE DEPARTMENT ON OR BEFORE MAY 7, 1982,
19 THE RIGHT REPRESENTED IN THE CLAIM IS, IN ADDITION,
20 SUBORDINATE TO:

21 (I) RIGHTS REPRESENTED IN ALL VALID, TIMELY FILED
22 CLAIMS; AND

23 (II) RIGHTS REPRESENTED IN A PERMIT OR RESERVATION OF
24 WATER ISSUED UNDER THIS CHAPTER IF AND TO THE EXTENT THAT
25 THE PERSON HOLDING THE PERMIT OR RESERVATION FILES AN

1 OBJECTION UNDER THIS PART AND PROVES THAT THE PERSON HOLDING
 2 THE PERMIT OR RESERVATION REASONABLY RELIED TO THE DETRIMENT
 3 OF THE PERSON HOLDING THE PERMIT OR RESERVATION UPON THE
 4 FAILURE OF THE CLAIMANT TO FILE A CLAIM ON OR BEFORE APRIL
 5 30, 1982.

6 (4) The department and the district courts may not
 7 accept any statements of claim physically submitted or
 8 postmarked after July 1, 1995 1996, AND SHALL NOTIFY A
 9 PERSON WHO FILES A CLAIM AFTER JULY 1, 1996, THAT THE CLAIM
 10 WILL NOT BE ACCEPTED."

11 **Section 5.** Section 85-2-225, MCA, is amended to read:

12 "85-2-225. Filing fee -- processing fee for remitted
 13 claims. (1) Each claim filed under 85-2-221 or 85-2-222 must
 14 be accompanied by a filing fee in the amount of \$40, subject
 15 to the following exceptions:

16 (a) the total filing fees for all claims filed by one
 17 person in any one water court division may not exceed \$480;
 18 and

19 (b) no filing fee is required accompanying a claim of
 20 an existing right that is included in a decree of a court in
 21 the state of Montana and which that is accompanied by a copy
 22 of that decree or pertinent portion thereof.

23 (2) A claim that is exempt from the filing requirements
 24 of 85-2-221(1) but that is voluntarily filed must be
 25 accompanied by a filing fee in the amount of \$40. Exempt

1 claims for a single development with several uses if filed
 2 simultaneously may be accompanied by a filing fee in the
 3 amount of \$40.

4 (3) (a) Except as provided in subsection ~~(3)(b)~~ (3)(C),
 5 in addition to the filing fee set forth in subsection (1),
 6 each statement of claim filed under 85-2-221(3) must be
 7 accompanied by a processing fee in the amount of ~~\$300~~ \$100
 8 \$150, WHICH MUST BE DEPOSITED IN THE WATER RIGHTS
 9 ADJUDICATION ACCOUNT FOR THE EXAMINATION OF LATE CLAIMS BY
 10 THE DEPARTMENT AND FOR THE PUBLICATION OF NOTICES BY THE
 11 DEPARTMENT AS REQUIRED UNDER 85-2-213(2).

12 (B) ~~IF AN OBJECTION IS FILED TO A LATE CLAIM, THE~~ THE
 13 WATER JUDGE SHALL ASSESS ~~AN ADDITIONAL FEE OF \$200 AGAINST~~
 14 ~~THE PERSON ASSERTING THE LATE CLAIM~~ AGAINST THE LATE
 15 CLAIMANT ALL REASONABLE ADMINISTRATIVE COSTS AND EXPENSES
 16 THAT MAY BE INCURRED BY THE COURT DUE TO THE FILING OF THE
 17 LATE CLAIM AND THE CONSIDERATION OF THE OBJECTION, WHICH FEE
 18 ASSESSMENT MUST BE DEPOSITED IN THE WATER RIGHTS
 19 ADJUDICATION ACCOUNT.

20 ~~(b)~~(C) For a statement of claim that was filed after
 21 April 30, 1982, but prior to [the effective date of this
 22 act] or for a statement of claim filed by a state agency,
 23 the processing fee provided for in subsection (3)(a) must be
 24 paid on or before ~~the entry of the temporary preliminary~~
 25 ~~decree or the preliminary decree for the basin for which the~~

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1 claim-is-filed A DATE TO BE ESTABLISHED BY THE DEPARTMENT BY
2 RULE, BUT NO LATER THAN JULY 1, 1999."

3 **Section 6.** Section 85-2-226, MCA, is amended to read:

4 "85-2-226. Abandonment by failure to file claim. The
5 failure to file a claim of an existing right as required by
6 85-2-221(1) establishes a conclusive presumption of
7 abandonment of that right."

8 **Section 7.** Section 85-2-234, MCA, is amended to read:

9 "85-2-234. Final decree. (1) The water judge shall, on
10 the basis of the preliminary decree and on the basis of any
11 hearing that may have been held, enter a final decree
12 affirming or modifying the preliminary decree. If no request
13 for a hearing is filed within the time allowed, the
14 preliminary decree automatically becomes final, and the
15 water judge shall enter it as the final decree.

16 (2) The terms of a compact negotiated and ratified
17 under 85-2-702 must be included in the final decree without
18 alteration unless an objection is sustained pursuant to
19 85-2-233; provided that the court may not alter or amend any
20 of the terms of a compact except with the prior written
21 consent of the parties in accordance with applicable law.

22 (3) The final decree ~~shall~~ must establish the existing
23 rights and priorities within the water judge's jurisdiction
24 of persons required-by who have filed a claim in accordance
25 with 85-2-221 ~~to--file--a--claim--for--an--existing--right, of~~

1 persons required to file a declaration of existing rights in
2 the Powder River basin pursuant to an order of the
3 department or a district court issued under sections 8 and 9
4 of Chapter 452, Laws of 1973, and of any federal agency or
5 Indian tribe possessing water rights arising under federal
6 law, required by 85-2-702 to file claims.

7 (4) The final decree ~~shall~~ must establish, in a form
8 determined to be appropriate by the water judge, one or more
9 tabulations or lists of all water rights and their relative
10 priorities.

11 (5) The final decree ~~shall~~ must state the findings of
12 fact, along with any conclusions of law, upon which the
13 existing rights and priorities of each person, federal
14 agency, and Indian tribe named in the decree are based.

15 (6) For each person who is found to have an existing
16 right arising under the laws of the state of Montana, the
17 final decree ~~shall~~ must state:

18 (a) the name and post-office address of the owner of
19 the right;

20 (b) the amount of water included in the right, as
21 follows:

22 (i) by flow rate for direct flow rights, such as
23 irrigation rights;

24 (ii) by volume for rights, such as stockpond and
25 reservoir storage rights, and for rights that are not

1 susceptible to measurement by flow rate; or

2 (iii) by flow rate and volume for rights that a water

3 judge determines require both volume and flow rate to

4 adequately administer the right;

5 (c) the date of priority of the right;

6 (d) the purpose for which the water included in the

7 right is used;

8 (e) the place of use and a description of the land, if

9 any, to which the right is appurtenant;

10 (f) the source of the water included in the right;

11 (g) the place and means of diversion;

12 (h) the inclusive dates during which the water is used

13 each year;

14 (i) any other information necessary to fully define the

15 nature and extent of the right.

16 (7) For each person, tribe, or federal agency

17 possessing water rights arising under the laws of the United

18 States, the final decree ~~shall~~ must state:

19 (a) the name and mailing address of the holder of the

20 right;

21 (b) the source or sources of water included in the

22 right;

23 (c) the quantity of water included in the right;

24 (d) the date of priority of the right;

25 (e) the purpose for which the water included in the

1 right is currently used, if at all;

2 (f) the place of use and a description of the land, if

3 any, to which the right is appurtenant;

4 (g) the place and means of diversion, if any; and

5 (h) any other information necessary to fully define the

6 nature and extent of the right, including the terms of any

7 compacts negotiated and ratified under 85-2-702.

8 (8) Clerical mistakes in a final decree may be

9 corrected at any time on the initiative of the water judge

10 or on the petition of any person who possesses a water

11 right. The water judge shall order the notice of a

12 correction proceeding as he determines to be appropriate to

13 advise all persons who may be affected by the correction. An

14 order of the water judge making or denying a clerical

15 correction is subject to appellate review."

16 **Section 8.** Section 85-2-237, MCA, is amended to read:

17 "85-2-237. Reopening and review of decrees. (1) The

18 After July 1, 1995 1996, the water judges shall by order

19 reopen and review, within the limits set forth by the

20 procedures described in this section, all preliminary or

21 final decrees;

22 (a) that have been issued by the water courts but have

23 not been noticed throughout the water divisions; or

24 (b) for basins for which claims have been filed under

25 85-2-221(3).

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1 (2) (a) Each order must state that the water judge will
 2 reopen the decree or decrees and, upon a hearing, review the
 3 water court's determination of any claim in the decree or
 4 decrees if an objection to the claim has been filed for the
 5 purpose of protecting rights to the use of water from
 6 sources:

7 (i) within the basin for which the decree was entered;
 8 or

9 (ii) in other basins that are hydrologically connected
 10 to sources within the basin for which the decree was
 11 entered.

12 (b) A person may not raise an objection to a matter in
 13 a reopened decree if he the person was a party to the matter
 14 when the matter was previously litigated and resolved as the
 15 result of the previous objection process, unless the
 16 objection is allowed for any of the following reasons:

17 (i) mistake, inadvertence, surprise, or excusable
 18 neglect;

19 (ii) newly discovered evidence that by due diligence
 20 could not have been discovered in time to move for a new
 21 trial under Rule 59(b), Montana Rules of Civil Procedure;

22 (iii) fraud, misrepresentation, or other misconduct of
 23 an adverse party;

24 (iv) the judgment is void;

25 (v) any other reason justifying relief from the

1 operation of the judgment.

2 (c) The objection must be made in accordance with the
 3 procedure for filing objections under 85-2-233.

4 (3) The water judges shall serve notice by mail of the
 5 entry of the order providing for the reopening and review of
 6 a decree or decrees to the department and to the persons
 7 entitled to receive service of notice under 85-2-232(1).

8 (4) Notice of the reopening and review of a preliminary
 9 or final decree must also be published at least once each
 10 week for 3 consecutive weeks in at least three newspapers of
 11 general circulation which that cover the water division or
 12 divisions in which the decreed basin is located.

13 (5) No objection may cause a reopening and review of a
 14 claim unless the objection is filed with the appropriate
 15 water court within 180 days after the issuance of the order
 16 under subsection (1). This period of time may, for good
 17 cause shown, be extended by the water judge for up to two
 18 90-day periods if an application for extension is made
 19 within the original 180-day period or any extension of it.

20 (6) The water judge shall provide notice to the
 21 claimant of any timely objection to his the claim and, after
 22 further reasonable notice to the claimant, the objector or
 23 objectors, and other interested persons, set the matter for
 24 hearing. The water judge may conduct individual or
 25 consolidated hearings, and any hearing must be conducted

1 according to the Montana Rules of Civil Procedure. On an
2 order of the water judge, a hearing may be conducted by a
3 water master, who shall prepare a report of the hearing as
4 provided in Rule 53(e), Montana Rules of Civil Procedure.

5 (7) The water judge shall, on the basis of any hearing
6 held on the matter, take action as warranted from the
7 evidence before him, including dismissal of the objection or
8 modification of the portion of the decree describing the
9 contested claim.

10 (8) An order or decree modifying a previously issued
11 final decree as a result of procedures described in this
12 section may be appealed in the same manner as provided for
13 an appeal taken from a final order of a district court.

14 (9) An order or decree modifying a previously issued
15 preliminary decree as a result of procedures described in
16 this section may be appealed under 85-2-235 when the
17 preliminary decree has been made a final decree."

18 **Section 9.** Section 85-2-306, MCA, is amended to read:

19 **"85-2-306. (Temporary) Exceptions to permit**
20 **requirements -- fee.** (1) Ground water may be appropriated
21 only by a person who has a possessory interest in the
22 property where the water is to be put to beneficial use and
23 exclusive property rights in the ground water development
24 works or, if another person has rights in the ground water
25 development works, the written consent of the person with

1 those property rights. Outside the boundaries of a
2 controlled ground water area, a permit is not required
3 before appropriating ground water by means of a well or
4 developed spring with a maximum appropriation of 35 gallons
5 per minute or less, not to exceed 10 acre-feet per year,
6 except that a combined appropriation from the same source
7 from two or more wells or developed springs exceeding this
8 limitation requires a permit. Within 60 days of completion
9 of the well or developed spring and appropriation of the
10 ground water for beneficial use, the appropriator shall file
11 a notice of completion with the department on a form
12 provided by the department at its offices and at the offices
13 of the county clerk and recorders and pay a filing fee. Upon
14 receipt of the notice, the department shall review the
15 notice and may, before issuing a certificate of water right,
16 return a defective notice for correction or completion,
17 together with the reasons for returning it. A notice does
18 not lose priority of filing because of defects if the notice
19 is corrected, completed, and refiled with the department
20 within 30 days or within a further time as the department
21 may allow, not to exceed 6 months. If a notice is not
22 corrected and completed within the time allowed, the
23 priority date of appropriation ~~shall--be~~ is the date of
24 refiled a correct and complete notice with the department.
25 A certificate of water right may not be issued until a

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1 correct and complete notice has been filed with the
2 department. The original of the certificate ~~shall~~ must be
3 sent to the appropriator. The department shall keep a copy
4 of the certificate in its office in Helena. The date of
5 filing of the notice of completion is the date of priority
6 of the right.

7 (2) An appropriator of ground water by means of a well
8 or developed spring first put to beneficial use between
9 January 1, 1962, and July 1, 1973, who did not file a notice
10 of completion, as required by laws in force prior to April
11 14, 1981, with the county clerk and recorder shall file a
12 notice of completion, as provided in subsection (1) ~~of this~~
13 ~~section~~, with the department to perfect the water right. The
14 filing of a claim ~~of--existing--water--right~~ pursuant to
15 85-2-221 is sufficient notice of completion under this
16 subsection. The priority date of the appropriation ~~shall--be~~
17 is the date of the filing of a notice as provided in
18 subsection (1) of this section or the date of the filing of
19 the claim of existing water right. An appropriation under
20 this subsection is an existing right, and a permit is not
21 required; however, the department shall acknowledge the
22 receipt of a correct and complete filing of a notice of
23 completion, except that for an appropriation of 35 gallons
24 per minute or less, not to exceed 10 acre-feet per year, the
25 department shall issue a certificate of water right. If a

1 certificate is issued under this section, a certificate need
2 not be issued under the adjudication proceedings provided
3 for in 85-2-236.

4 (3) A permit is not required before constructing an
5 impoundment or pit and appropriating water for use by
6 livestock if the maximum capacity of the impoundment or pit
7 is less than 15 acre-feet and the appropriation is less than
8 30 acre-feet per year and is from a source other than a
9 perennial flowing stream and the impoundment or pit is to be
10 constructed on and will be accessible to a parcel of land
11 that is owned or under the control of the applicant and that
12 is 40 acres or larger. As used in this subsection, a
13 perennial flowing stream means a stream ~~which~~ that
14 historically has flowed continuously at during all seasons
15 of the year, during dry as well as wet years. However,
16 within 60 days after constructing the impoundment or pit,
17 the appropriator shall apply for a permit as prescribed by
18 this part. Upon receipt of a correct and complete
19 application for a stockwater provisional permit, the
20 department shall then automatically issue a provisional
21 permit. If the department determines after a hearing that
22 the rights of other appropriators have been or will be
23 adversely affected, it may revoke the permit or require the
24 permittee to modify the impoundment or pit and may then make
25 the permit subject to such terms, conditions, restrictions,

1 or limitations it considers necessary to protect the rights
2 of other appropriators.

3 (4) A person may also appropriate water without
4 applying for or prior to receiving a permit under rules
5 adopted by the board under 85-2-113.

6 (5) In addition to the filing fee prescribed by the
7 board by rule pursuant to 85-2-113, a person filing a notice
8 under subsection (1) shall pay a \$10 fee, and the department
9 shall deposit \$10 of each filing fee collected pursuant to
10 subsection (1) in the ground water assessment account,
11 established in 85-2-905, within the state special revenue
12 fund. (Terminates July 1, 1993--sec. 22, Ch. 769, L. 1991.)

13 85-2-306. (Effective July 1, 1993) Exceptions to permit
14 requirements. (1) Ground water may be appropriated only by a
15 person who has a possessory interest in the property where
16 the water is to be put to beneficial use and exclusive
17 property rights in the ground water development works or, if
18 another person has rights in the ground water development
19 works, the written consent of the person with those property
20 rights. Outside the boundaries of a controlled ground water
21 area, a permit is not required before appropriating ground
22 water by means of a well or developed spring with a maximum
23 appropriation of 35 gallons per minute or less, not to
24 exceed 10 acre-feet per year, except that a combined
25 appropriation from the same source from two or more wells or

1 developed springs exceeding this limitation requires a
2 permit. Within 60 days of completion of the well or
3 developed spring and appropriation of the ground water for
4 beneficial use, the appropriator shall file a notice of
5 completion with the department on a form provided by the
6 department at its offices and at the offices of the county
7 clerk and recorders. Upon receipt of the notice, the
8 department shall review the notice and may, before issuing a
9 certificate of water right, return a defective notice for
10 correction or completion, together with the reasons for
11 returning it. A notice does not lose priority of filing
12 because of defects if the notice is corrected, completed,
13 and refiled with the department within 30 days or within a
14 further time as the department may allow, not to exceed 6
15 months. If a notice is not corrected and completed within
16 the time allowed, the priority date of appropriation ~~shall~~
17 be is the date of refileing a correct and complete notice
18 with the department. A certificate of water right may not be
19 issued until a correct and complete notice has been filed
20 with the department. The original of the certificate ~~shall~~
21 must be sent to the appropriator. The department shall keep
22 a copy of the certificate in its office in Helena. The date
23 of filing of the notice of completion is the date of
24 priority of the right.

25 (2) An appropriator of ground water by means of a well

1 or developed spring first put to beneficial use between
 2 January 1, 1962, and July 1, 1973, who did not file a notice
 3 of completion, as required by laws in force prior to April
 4 14, 1981, with the county clerk and recorder shall file a
 5 notice of completion, as provided in subsection (1) of--this
 6 section, with the department to perfect the water right. The
 7 filing of a claim of--existing--water--right pursuant to
 8 85-2-221 is sufficient notice of completion under this
 9 subsection. The priority date of the appropriation shall-be
 10 is the date of the filing of a notice as provided in
 11 subsection (1) of this section or the date of the filing of
 12 the claim of existing water right. An appropriation under
 13 this subsection is an existing right, and a permit is not
 14 required; however, the department shall acknowledge the
 15 receipt of a correct and complete filing of a notice of
 16 completion, except that for an appropriation of 35 gallons
 17 per minute or less, not to exceed 10 acre-feet per year, the
 18 department shall issue a certificate of water right. If a
 19 certificate is issued under this section, a certificate need
 20 not be issued under the adjudication proceedings provided
 21 for in 85-2-236.

22 (3) A permit is not required before constructing an
 23 impoundment or pit and appropriating water for use by
 24 livestock if the maximum capacity of the impoundment or pit
 25 is less than 15 acre-feet and the appropriation is less than

1 30 acre-feet per year and is from a source other than a
 2 perennial flowing stream and the impoundment or pit is to be
 3 constructed on and will be accessible to a parcel of land
 4 that is owned or under the control of the applicant and that
 5 is 40 acres or larger. As used in this subsection, a
 6 perennial flowing stream means a stream which that
 7 historically has flowed continuously at during all seasons
 8 of the year, during dry as well as wet years. However,
 9 within 60 days after constructing the impoundment or pit,
 10 the appropriator shall apply for a permit as prescribed by
 11 this part. Upon receipt of a correct and complete
 12 application for a stockwater provisional permit, the
 13 department shall then automatically issue a provisional
 14 permit. If the department determines after a hearing that
 15 the rights of other appropriators have been or will be
 16 adversely affected, it may revoke the permit or require the
 17 permittee to modify the impoundment or pit and may then make
 18 the permit subject to such terms, conditions, restrictions,
 19 or limitations it considers necessary to protect the rights
 20 of other appropriators.

21 (4) A person may also appropriate water without
 22 applying for or prior to receiving a permit under rules
 23 adopted by the board under 85-2-113."

24 ~~NEW-SECTION--Section 10--Nonseverability--It--is--the--~~
 25 ~~intent-of-the-legislature-that-each-part-of--{this--act}--is~~

~~essentially-dependent-upon-every-other-part,-and-if-one-part
is--held--unconstitutional--or--invalid,-all-other-parts-are
invalid.~~

NEW SECTION. **SECTION 10.** LATE CLAIM INTERIM STUDY --

WATER POLICY COMMITTEE. (1) THE WATER POLICY COMMITTEE, IN
COORDINATION WITH THE DEPARTMENT OF JUSTICE, THE DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION, AND THE RESERVED
WATER RIGHTS COMPACT COMMISSION, SHALL CONDUCT AN INTERIM
STUDY ANALYZING THE NEED FOR AND DESIRABILITY AND IMPACTS OF
ALLOWING THE REMISSION OF FORFEITED WATER RIGHTS IN ADDITION
TO THE REMISSIONS AUTHORIZED UNDER THE PROVISIONS OF [THIS
ACT]. THE STUDY MUST ANALYZE THE IMPACTS OF ADDITIONAL
FORFEITURE REMISSION ON:

(A) THE GENERAL STREAM ADJUDICATION PROCESS, INCLUDING
BUT NOT LIMITED TO THE ISSUES OF ADEQUACY AND MONTANA'S AND
THE FEDERAL GOVERNMENT'S CONCURRENT WATER RIGHTS
ADJUDICATION JURISDICTION;

(B) THE FEDERAL GOVERNMENT AND INDIAN TRIBES REGARDING
EXISTING AND FUTURE NEGOTIATED WATER RIGHTS COMPACTS,
INCLUDING BUT NOT LIMITED TO THE ISSUES OF EQUAL PROTECTION;

(C) TIMELY CLAIMANTS' WATER USE;

(D) TIMELY CLAIMANTS' LEGAL RIGHTS, INCLUDING BUT NOT
LIMITED TO CONSTITUTIONAL REQUIREMENTS REGARDING THE TAKING
OF PROPERTY;

(E) THE POTENTIAL REDUCTION IN AGRICULTURAL PRODUCTION

RESULTING FROM NOT GRANTING ADDITIONAL FORFEITURE REMISSIONS
AND THE ASSOCIATED SOCIAL AND ECONOMIC IMPACTS;

(F) THE ISSUE OF FAIRNESS TO BOTH LATE AND TIMELY
CLAIMANTS;

(G) THE POTENTIAL INCREASED COSTS TO THE STATE AND TO
LATE AND TIMELY CLAIMANTS;

(H) POTENTIAL LOSSES IN REVENUE TO THE STATE RESULTING
FROM THE STATE'S FAILURE TO FILE CLAIMS TO EXISTING WATER
RIGHTS ON OR BEFORE APRIL 30, 1982;

(I) IMPLICATIONS INVOLVING THE STATE'S TRUST
RESPONSIBILITIES;

(J) POTENTIAL LITIGATION AGAINST THE STATE BY PRIVATE
PARTIES; AND

(K) IMPACTS ON MUNICIPAL AND COUNTY GOVERNMENTS
RESULTING FROM LATE CLAIMS.

(2) THE STUDY MUST INCLUDE AN ANALYSIS OF THE POTENTIAL
FOR IDENTIFYING INDIVIDUALS OR CLASSES OF INDIVIDUALS WHOSE
ADDITIONAL FORFEITURE REMISSION COULD BE AUTHORIZED IN A
MANNER THAT WOULD HAVE AN ACCEPTABLE IMPACT ON THOSE ISSUES
IDENTIFIED UNDER SUBSECTION (1). THE CLASSES OF LATE
CLAIMANTS INCLUDE BUT ARE NOT LIMITED TO PREVIOUSLY DECREED
WATER RIGHTS HOLDERS AND CLASSES ESTABLISHED ACCORDING TO
FILING DATE.

(3) THE STUDY MUST BE COMPLETED IN CONSULTATION WITH
OTHER RELEVANT STATE AND FEDERAL AGENCIES, RELEVANT GROUPS

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1 AND ORGANIZATIONS, AND OTHER INTERESTED AND AFFECTED
2 CITIZENS.

3 (4) THE WATER POLICY COMMITTEE SHALL REPORT THE RESULTS
4 OF THE STUDY TO THE 54TH LEGISLATURE BY OCTOBER 1, 1994. THE
5 REPORT MUST INCLUDE ANY LEGISLATIVE OR OTHER POLICY OPTIONS
6 RECOMMENDED BY THE WATER POLICY COMMITTEE.

7 NEW SECTION. SECTION 11. SAVING CLAUSE. [THIS ACT]
8 DOES NOT AFFECT PROCEEDINGS THAT WERE BEGUN BEFORE [PASSAGE
9 AND APPROVAL OF THIS ACT] IN WHICH RELIEF FOR DAMAGES HAVE
10 BEEN SOUGHT BASED UPON THE DIVERSION, IMPOUNDMENT, OR
11 WITHDRAWAL OF WATER WITHOUT A WATER RIGHT ESTABLISHED UNDER
12 STATE LAW.

13 NEW SECTION. SECTION 12. SEVERABILITY -- PARTIAL
14 NONSEVERABILITY. (1) IF A PART OF [THIS ACT] IS INVALID, ALL
15 VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN
16 IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE
17 OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
18 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID
19 APPLICATIONS.

20 (2) IT IS THE INTENT OF THE LEGISLATURE THAT EACH PART
21 OF [THIS ACT] IS ESSENTIALLY DEPENDENT UPON [SECTION 4],
22 WHICH AMENDS 85-2-221, AND THAT IF ONE PART OF [SECTION 4],
23 EXCEPT SUBSECTION (3)(F)(II), IS HELD UNCONSTITUTIONAL OR
24 INVALID, ALL OTHER PARTS OF [THIS ACT] ARE INVALID.

25 NEW SECTION. --SECTION 11. --CONTINGENT --VOIDNESS. --IF --*

1 PART-OF-{THIS-ACT}-IS-FOUND-TO-ESTABLISH-A--CONDITION--UNDER
2 WHICH--THE--PROVISIONS--OF--TITLE--85--DO--NOT-PROVIDE-FOR-A
3 GENERAL-STREAM-ADJUDICATION-FOR-WHICH-THE-UNITED-STATES--HAS
4 WAIVED--ITS--IMMUNITY--FROM-SUIT-UNDER-43-U.S.C.-666-OR-IF-A
5 PART--OF--85-2-221(3)(E)--AS--AMENDED--BY--{THIS--ACT}--IS
6 INVALID--THEN-{THIS-ACT}-IS-VOID.

7 NEW SECTION. Section 13. Effective date. [This act] is
8 effective July 1, 1993.

-End-